

UNITED STATES DEPARTMENT OF AGRICULTURE  
SOUTHERN DISTRICT OF NEW YORK

-----)C  
FRANKLYNF. LUGO,

Plaintiff,

- against -

UNITED STATES OF AMERICA,

Defendant.  
-----)C

: 08 Civ. 2960 (RJS)

:AFFIRMATION IN OPPOSITION  
TO MOTION FOR SUMMARY  
JUDGMENT

PETER R. SHIPMAN, an attorney at law duly authorized to practice in the Southern District of New York, affirms under penalty of perjury the following:

1. This office represents the plaintiff in the above referenced action for a denovo review of administrative discipline pursuant to 7 USC §2023 (14 of the Food Stamp Act of 1977), and this affirmation is made in opposition to the defendant's motion for summary judgment.
2. The motion for summary judgment by defendant is without merit, particularly, pre-completion of discovery.
3. The gist of defendants' proposed motion is that if the agency's administrative discipline or sanction falls within the spectrum of the discipline permissible under the terms of the applicable regulation, then this Federal Court is without any power to decide the appropriateness of the discipline absent any arbitrary and capricious conduct by the agency in imposing such sanction.
4. This argument, while accepted in several courts, has been rejected by others. The Second Circuit in Ibrahim v. U.S. 834, F.2d, 52 (2d Cir. 1987), held specifically that:

The Food Stamp Act's denovo review prOVISION embodies a different and broader scope of review than that available under the APA, 5. U.S.C. §706 (2)(A). See *J.C.B. SuperMarkets, Inc. v. United*

*States*, 57 F.R.D. 500, 502-03 (W.D.N.Y. 1972), *Aff'd*, 530 F.2d 1119 (2d Cir. 1976); *Modica v. United States*, 518 F.2d 374, 376 (5th Cir. 1975); *Cross v. United States*, 512 F.2d 1212, 1216 (4th Cir. 1975) (in banc). THIS REVIEW "REQUIRES A REEXAMINATION OF THE ENTIRE MATTER RATHER THAN A MERE DETERMINATION OF WHETHER THE ADMINISTRATIVE FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE." *Saunders v. United States*, 507 F.2d 33, 36 (6th Cir. 1974). As a result, the district court "MUST REACH ITS OWN FACTUAL AND LEGAL CONCLUSIONS BASED ON THE PREPONDERANCE OF THE EVIDENCE AND SHOULD NOT LIMIT ITS CONSIDERATION TO MATTERS PREVIOUSLY \*54 APPRAISED IN THE ADMINISTRATIVE PROCEEDINGS." *Modica*, 581 F.2d at 376.

*Camp v. Pitts*, 411 U.S. 138, 93 S.Ct. 1241, 36 L.Ed.2d 106 (1973) (per curiam), relied upon by Ibrahim, is not on point. That case involved review of a decision by the Comptroller of the Currency denying a national bank's charter, and no statute or regulation provided for *de novo* review. The APA therefore governed. Here, IN CONTRAST, THE FOOD STAMP ACT SPECIFICALLY PROVIDES "SHALL BE A TRIAL DE NOVO" 7 U.S.C. § 2023(a).

In A TRIAL DE NOVO, "THE RECORD IN THE DISTRICT COURT, NOT THE RECORD BEFORE THE AGENCY, IS WHAT COUNTS". *McGlory v. United States*, 763 F.2d 309, 311 (7th Cir. 1985).

5. Other circuits have agreed with the second, E.g. Commonwealth of Mass. v. Secretary of Agriculture, 984 F.2d 514 cert. denied, 114 S.Ct. 81, 510 US 822 (1993) (mixed issues of liability and sanction must be assessed denovo). Complete *denovo* review is mandated under the Act even if this "penetrating standard of judicial review" intrudes into agency decision making in sanctions area. Commonwealth of Massachusetts v. Secretary of Agriculture, 984 F.2d 514 cert. denied 510 US 822 (1993). The 5th Circuit agreed in Goodman v. US, 518 F.2d 505 (5th cir. 1975) that administrative action which is subject to *denovo* review is a unitary concept which encompasses both a determination on the merits and, where guilt is established, meting out of an appropriate penalty. Accord, Modica v. US (5th Cir. 1975). The 6th Circuit agreed in Saunders v. US, 507 F.2d

33507 F.2d33 (6<sup>th</sup> 1974) (court must make its own [mdings of fact in reviewing disqualification by USDA). Even the legislative history compels the conclusion that this District Court has the jurisdiction and authority to review de novo agency discipline, even where the existence of the violation is undisputed, or conceded, or where it has been established by judicial trial. The Senate Report accompanying the Food Stamp Act explained that:

"§2022 provides for administrative and judicial review of the decision of the Secretary with respect to ... the disqualification of a retail or wholesale food concern participating in the program". 1964 U.S. Code Congo & Administrative News, p. 3291.

6. The Lawrence decision is distinguishable on several grounds. There the court reversed the Southern District of New York's reduction of discipline because the district court had misinterpreted (by reading in an additional legal requirement into) the one year disqualification regulations. Because Lawrence turned on a Trial Court misconstruction of statute, it turned on an issue of law. Hence, it's comments regarding the arbitrary and capricious standard for review of discipline is dicta.

Second, in Lawrence the agency conducted both pre-disciplinary counseling sessions with licensee, and issued not one, but a series of letter warnings to licensee, then finally agreed to a three month monitoring period, all pre-discipline. The agency at bar failed to provide any of that procedural due process to plaintiff at bar (moving affirmation of AUSA Joseph Cordero) as and for it's due process.!

I Additionally, defendant agency concedes that it has ~ afforded plaintiff/licensee any trial, or other evidentiary viva voce hearing, in any forum, by any name. (Moving affirmation, ubique.) Now, to make this denial even more egregious, the defendant proposes to deny plaintiff a trial even in this Court, and after Congress has provided for it in the strongest terms ("De Novo").

7. Defendant claims that it supplied brochures on the law to plaintiff, as proof of due process. The Second Circuit in Lawrence termed the agency's regulations "labyrinthine" and "almost unintelligible." If the Second Circuit so views comprehensibility of the agency's license regulations, what level of comprehension is to be expected of an uneducated, immigrant, grocery store owner?

8. To the extent there exists any appellate authority for the proposition that this honorable court is without power to review discipline in the absence of agency abuse of discretion or arbitrary and capricious conduct, then those authorities are in direct irreconcilable controversion of the jurisdictional statute, 7 US §2023, and may not be followed. It is well settled that Congressional intent, particularly when it is expressed in clear and unambiguous language, (i.e. "denovo" review) governs the court's power and jurisdiction. A desire to follow stare decisis of the circuit is admirable, but it is still unlawful to follow it if in so doing so the District Court must necessarily overrule an express mandate of the legislature. Any regulation or other non constitutional authority (i.e. including case precedent) which is contrary to statute is trumped by a duly enacted Federal legislative mandate. US v. Maxwell, 278 F.2D 206, (8<sup>th</sup> Cir. 1960). If an irreconcilable tension or anomaly arises between this Court following appellate precedent and following an express mandate of Congress, it is respectfully submitted that the higher duty of the two conflicting duties lay in submission by the District Court to the Congressional mandate.

9. Second, the defendant's contention that as long as the discipline imposed lies within the expressed spectrum of discipline imposable under the regulations then, as a matter of law, there can be no finding of abuse of discretion appears to create a renvoi of circuitous reasoning, if not a non-sequitur. This is because at bottom it posits that if an agency's rules empowered it to impose the discipline, then such, discipline decided upon necessarily constitutes an appropriate, lawful, and

most of all, just discipline (which is also, for all practical purposes, then unreviewable according to counsel for defendant).

10. Such a test, if accepted at Bar, would effectively eviscerate both the agency's own regulations providing for judicial review and more particularly, eviscerate or repeal the judicial review statute itself in pertinent part and subject matter jurisdiction of this Court. Such a standard of review would nullify the statutory words "De Novo", and, second, such standard of review would necessarily mean that if the agency imposes discipline within the expressed spectrum of the agency's own regulations, then by definition, ipso facto, there has been no abuse of discretion or arbitrary and capricious conduct.

11. In addition, the agency's regulation §278.6(e)(4) cited by the agency as authority for the one year disqualification does not specifically or even generally expressly authorize a one year or any disqualification where there is a finding of a violation at Bar, to wit: extending credit to customers. Such is conceded by the defendant, at Memorandum of Law, p. 11. Rather the regulation expressly actually addresses only the sale of non food (meaning ineligible for purchase by food coupons) items. Any issue of allegation of the sale of non food items has been removed from the case by the agency's own decisions, both by local USDA decision and on administrative appeal. Thus the argument of Defendants based largely upon Lawrence, fails, because this Court could well find that the regulation utilized by defendant to impose a disqualification upon plaintiff does not even apply to the facts of this case (credit sales).

12. Assuming arguendo the Court adopts the defendant's extremely restrictive concept of judicial review as being limited to testing for an abuse of discretion or arbitrary and capricious administrative conduct, then accelerated judgment must still be denied. This is because there

remains a triable question of fact even under an arbitrary and capricious standard regarding whether or not the agency engaged in such conduct. In particular Lawrence (at p. 277), heavily relied upon by defendant, noted that in order that discipline imposed may avoid a finding of arbitrary and capricious administrative conduct, the discipline imposed need be demonstrated to be imposed "against everyone" and "at all times". This rule of law has also been conceded by defendant, in Memorandum of Law at p. 12. Clearly, this is a two part test, the failure of either branch of which mandates a finding by the Court of arbitrary and capricious administrative conduct. Failure to follow it's own regulations constitutes an abuse of discretion (as a matter of law). An agency must follow it's own regulations as well as statutory mandates. This is true of all agencies. US. Ex. ReL. Accardi vs. Shaughnessey, 347 U.S. 260 (1954). Likewise, the agency must follow it's own "guidelines" as well as the regulations. E.g., Willy's Grocery vs. U.S., 656 F.2d. 24 (2nd Cir. 1981).

13. As a documentorily demonstrable fact matter, disqualification of food coupon vendor licensees has not been uniformly imposed against first time violators by the defendant. In fact, this is the first time in twenty five years involving this law firm in Federal Court de novo reviews of disqualifications wherein the agency has not settled the action or pre action dispute by means of substitution of a civil money penalty (CMP) in lieu of disqualification at the District Court level, or otherwise (before the agency), in cases including first time violations.

14. Annexed hereto as Exhibits "A", "B", "C", "D", "E", "F", "G", "H", "I", "J" and "1(" are Stipulations of Settlement granting CMP's executed by the defendant's agency (USDA) (FNS) over the course of the last ten years, the majority of which were then even So Ordered and thus recipients of this Honorable Court's own imprimatur. Surely, on this record, no Court can hold, at least as a matter of law (i.e. pursuant to FRCP 56), that the agency applied its discipline of

disqualification at bar in a manner not arbitrary and capricious<sup>2</sup>. Clearly, from the annexed documentary proofs annexed, the agency is palpably unable to prove to this Court that it has applied CFR §278.6(e)<sup>4</sup> and the regulation denying the substitution of a CMP in lieu of disqualification (whenever competing stores are nearby) "against "everyone" and, at "all times" Indeed, palpably, on the record annexed hereto it cannot prove either branch or criteria. Indeed on the record annexed hereto it is almost a certainty that it cannot prove it has ever applied this form of discipline (disqualification) for a first time offense, against anyone, at anytime.

15. Plaintiff intends to serve a Demand to Produce. It would seek, inter alia, copies of Stipulations of Settlement in all the cases for the past ten years in which the agency has imposed the discipline of civil monetary penalty (CMP) in lieu of a one (or other) year disqualification, in addition to its case deliberation notes, sheets, file folder jacket notes, etc. Only such document production with oral depositions of the agency's discipline officers will resolve the issue of abuse of discretion and arbitrary and capricious conduct. Conspicuously absent from the voluminous moving papers is any affidavit from the Secretary or even any Deputy Secretary explaining why plaintiff is being singled out for this quite apparent unique or near unique discipline for a first time violation.

16. In 1986 the Supreme Court of the United States held in Celotex Corp. V.s. Catrett, 477 U.S. 317, 322, that summary judgment may be granted only after the opposing party had "adequate time for discovery". At bar, no discovery order has been entered and consequently plaintiff has had

<sup>2</sup>In each case, the USDA had prima facie evidence food coupon violations, and proof of the existence of comparably stocked neighborhood competitor (licensed vendors) sufficient to deny a CJ\IP to the plaintiff under 278.6(f)1. A copy of the corresponding disqualification letters in each settled case are annexed hereto as Exhibits "M", "N", "O", "P", "Q", "R", "S", "T" and "U" which demonstrate that the agency had such proofs, and yet still granted a CJ\IP.

no time of discovery. Notably, neither has the defendant voluntarily disclosed either the remainder of its FM (field manual) nor its many other cases where it offered CMPs by Stipulation of Settlement of contested discipline (civil monetary penalty). Notably, while the defendant has disclosed an extremely selective and limited portion of handbook or FM #318, (Chaper 10 only), conspicuously absent is the remainder of agency handbook #318. This selective proffer of evidence violates the most fundamental rule of fairness under the FRE (Federal Rules of Evidence), in particular Rule 106 which requires that the remainder of a writing be considered and admitted upon the request of a party opposing that written evidence. Accordingly, plaintiff hereby requests disclosure of the remainder of that document, Handbook 318.

17. Even more telling is the defendant's failure/refusal to engage in Discovery in this action. The following decision which the defendant agent (USDA) issued recently in May 29, 2008 in a similar case In Re: Garland Supermarket (now before Judge Eaton) stated that:

"There also exist FNS policy memoranda and clarification letters, which further explain the conditions necessary to impose one year disqualification against firms, and in particular the applicability of a one year disqualification to (sic) violations involving re-pavement of credit". Administrative Review Decision annexed hereto as Exhibit "L".

Thus, because the agency has admitted in other cases it has utilized as a course of practice and further been guided in its decisions whether or not to impose one year disqualification for credit violations on criteria in addition to and potentially at variance with criteria publicly published in the regulations, no pre-discovery summary judgment can be fairly granted to the agency because plaintiff is entitled by due process to disclosure of those "policy memoranda" and "clarification letters". Plaintiff is entitled to these documents in order to determine whether or not



the decision to disqualify petitioner in this case is actually in accordance with the actual policy directives actually in use at the agency and which were actually applied at bar; in other words, to determine if the agency's decision at bar is arbitrary, capricious, or an abuse of discretion.<sup>3</sup> This is particularly true where this is the first case in the many years of this office prosecuting reviews of USDA disqualifications wherein the USDA has refused a CMP to a first time violator.

18. Based upon the limited disclosure (and that only by motion) so far, much evidence is now known to exist from the agency itself which raise a triable issue of fact as to whether the agency has acted in an arbitrary and capricious manner or indeed abused its discretion. For example, Chapter 10 of Handbook 318 annexed as Exhibit "D" to Notice of Motion states the following:

Paragraph

1010 REVIEW OF RECOMMENDATION AND CASE FILE.

A Background. The determining office shall review the background material in the case file for completeness. Any missing documentation relevant to the determination shall be requested from the field office, or other providing office. Items to be checked include:

- 1 Copies of WARNING (confirming) letters issued to the firm within the 3 year period prior to the investigation;
- 2 A record of the monitoring and compliance

<sup>3</sup>The Supreme Court has just this year issued its decision in Met Life Ins. Co. Vs. Glenn, 128 S. Ct. 2343 (2008) which indicates its strong preference for the abuse of discretion test as a significantly easier test for plaintiffs to meet than the "arbitrary and capricious" test in the Erisa, if not also administrative law context. Part of the reason why the Supreme Court there abandoned the arbitrary and capricious standard was for the very problem facing plaintiff as bar, i.e. the District Court erroneously believed plaintiffs are entitled to no discovery under such a test (i.e. limited, rather than plenary review) NYLJ "Metlife vs. Glenn" 9/15/08, p. 4, col. 3.

visits with the firm for the 3 year period prior to the investigation; and

Clearly, the agency's emphasis on including prior warning letters and a record of monitoring and compliance visits indicates how important these procedures are in the eyes of the agency itself; yet, remarkably, none of these due process safeguards were afforded plaintiff at bar as none were included in the agency's file as produced in support of the instant motion. (plaintiffs Record "A-R").

19. At various junctures in Chapter 10, the agency concedes in writing how essential it is to fairness that the agency's discipline (sanctions) be consistently applied; e.g.:

Paragraph

1020 "In order to protect the Program from abuse, appropriate penalties shall be imposed against authorized firms found to be violating. It is essential that these penalties be applied in a consistent manner and be based on fully documented evidence.

1020 The determining official shall strive for a determination which is both reasonable and consistent with regulations and with previous determinations in similar cases.

1050 Determining offices are responsible for setting up effective controls to ensure that determinations calling for actions less than disqualification are made in a consistent, reasonable, and equitable manner.

20. The agency's own Handbook also emphasizes how flagrant the violations must be, to wit: truly flagrant and/or egregious type before the agency's officers disqualify the

vendor/licensee:

Paragraph

1022 As a general rule, a case must have flagrant violations such as trafficking in food stamp benefits or ATPs, or a minimum of three clearly violative transactions involving ineligible items to warrant a sanction.

21. And, correlatively, the agency's own Handbook emphasizes how various alternatives to disqualification are available to that severe ultimate remedy; strongly suggesting an agency policy preference for the same:

Paragraph

1050 ACTION LESS THAN DISQUALIFICATION. Determining offices are authorized to make final determinations calling for actions less than disqualification in investigative cases, and to close the files on such cases upon completion of any administrative action. Determinations for actions less than disqualification call for [mal determination WARNING letters or, in some cases, no administrative action.

22. And lastly, the agency's own ("internal") Handbook provides that the officer is to distinguish gradations of seriousness of violation in credit sales cases by determining whether each credit sale was of a (food coupon) "eligible" or "ineligible item":

Paragraph

1021 5 Credit Payment Violations. The acceptance of food stamp benefits in payment or credit accounts is a violation of the regulations, regardless of whether or not the items sold on credit and subsequently paid for with food stamp benefits were eligible. However, the distinction between types of

ineligible items noted in paragraph 2 a. above. applies to the evaluation of credit violations as well as to the sale of ineligible items for food coupons.

23. There is no evidence at bar that any of these agency rules and internal policy [in particular ~I02I(5)] were complied with, as was noted above, there is no affidavit from the Secretary. Therefore, there is no reason for this Honorable Court to defer to the agency's "exercise of discretion" because on this record it has repeatedly failed to follow its own (internal) rules and policies as set forth above. In sum, there is a triable issue of fact on the issue of arbitrary and capricious agency conduct and abuse of discretion.

MOVANT'S ADMISSIONS REQUIRE DENIAL OF THE DRACONIAN REMEDY  
OF SUMMARY JUDGMENT

24. In addition to the many fact admissions which movants moving papers make, movant makes various admission oflaw which require denial of it's motion for draconian relief (draconian relief of summary judgment). One admission oflaw is the requirement of Willy's Grocery at page 9, last two lines of movant's Memorandum of Law. There movant admits that ifthe agency has not followed it's own regulations, the discipline must be reversed. Plaintiff submits it has demonstrated this as fact at least for the particular purposes of Rule 56 motion which "searches for issues" and does not resolve them. Second, the movant admits at its Memorandum of Law at p. 11, second paragraph that the regulations do not by their terms, on their face, provide for disqualification as a penalty for accepting program benefits (food coupons or elective credits) for items purchased on store credit in violation of 7 CFR §278.2(f). Movant attempts to "cure" this fatal infirmity in the process of imposition of disqualification of plaintiff at bar by reference to FNS Handbook 318

which movant admits to be and expressly denotes as "FNS internal guidelines".

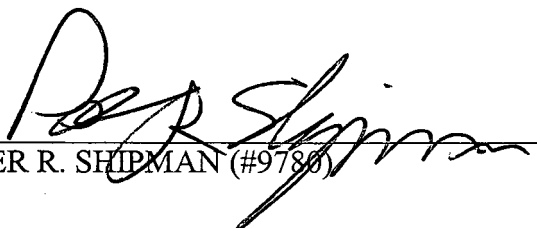
25. The court must deny summary judgment when a genuine issue of material fact remains to be tried, or where the moving party is not entitled to a judgment as a matter of law; in all other cases, the court enjoys some discretion to deny summary judgment where the court concludes that a fuller factual development is necessary, see Kennedy vs. Silas Mason Co., 334 U.S. 249, 68, S.Ct. 1031, 92 L.Ed. 1347 (1948) or where there is some particular reason to believe that the wiser course would be to proceed to trial. See Anderson vs. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed. 2d 202 (1986). In ruling on a motion for summary judgment, the court must never weigh the evidence or find the facts. Instead, the Court's role under Rule 56 is narrowly limited to assessing the threshold issue of whether a genuine issue exists as to material facts requiring a trial. Thus, the evidence of the non-moving party will be believed as true, all doubts will be resolved against the moving party, all evidence will be construed in the light most favorable to the non-moving party, and all reasonable inferences will be drawn in the non-moving party's favor. See Hunt vs. Cromartie, 526 U.S. 541, 119 S. Ct. 1545, 1551-52, 143 L. Ed. 2d 731 (1999); Eastman Kodak Co. Vs. Image Technical Servs., Inc., 504 U.S. 451, 456, 112 S.Ct. 2072, 2076, 119 L.Ed. 2d 265 (1992).

26. Consequently, both dismissal and summary judgment are premature and inappropriate at this time. Little discovery has occurred; summary judgment is a draconian remedy, and it deprives the plaintiff of his day in Court and, at bar, his livelihood.

WHEREFORE, plaintiff requests denial of the motion in its entirety and the issuance of a discovery schedule.

Dated: Bronx, New York  
August 7, 2008

Yours, etc.,

  
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PETER R. SHIPMAN (#9780)

UNITED STATES DEPARTMENT OF AGRICULTURE  
SOUTHERN DISTRICT OF NEW YORK

-----)C  
FRANKLYN F. LUGO,

Plaintiff, : 08 Civ. 2960 (RJS)

:AFFIDA VIT IN OPPOSITION

- against -

UNITED STATES OF AMERICA,

Defendant.

--1-----)C

I  
STATE OF NEW YORK)  
COUNTY OF BRONX ) ss.:

FRANKLYN F. LUGO, being duly sworn hereby deposes and states the following:

1. Your deponent is the plaintiff in the above captioned action and makes this affidavit in ~opposition to the defendant's motion for summary judgment.

MY RECORD SPEAKS FOR ITSELF

2. Your deponent has never violated the Act before these allegations were brought against me. I have a clean record in this business both food coupons and otherwise. Of all my various licenses, WIC, SLA, tobacco, etc., defendant herein is the only one which has ever complained about my conduct or store. Defendant has not alleged that any store has ever violated the law before the events of this case.

ENS UNFAIRNESS AND DENIAL OF DUE PROCESS OF APPLYING PENALTIES

3. Yes, deponent did receive the training video, and also the regulations/ "Do's and Don'ts" List as alleged in the "undisputed facts" attachment of defendant. However, deponent has

never received, nor does the defendant even claim, that deponent ever received the FNS Handbook #318 containing all these other policies and positions of FNS, which, in reality constitute an entirely separate set of rules supplementary or even at variance with, the official or public-rules handed out to licensees. Counsel for movant exclusively relies upon these unknown rules and guidelines to disqualify me for credit sales. The FNS Handbook should have been disclosed to the public prospectively, or at least to those whom FNS intends to discipline, to wit, the licensees themselves, not after imposition of discipline.

4. In my particular case, this means that there was no official regulation explicitly warning licensee that I could lose this license for permitting credit sales, (counsel advises neither §278.6(E)4 nor 278 in general explicitly or clearly state so) and the defendant's Memorandum at Law at p. 11 concedes it. Worse still the FNS, in order to avoid not only trial but also due process required discovery, comes forward with a hitherto totally unknown and undisclosed "Handbook" stating that a licensee can and should be disqualified for providing wholesome foods (not beer, cigarettes, etc.) for credit sales to indigents. Even more egregious, my counsel also advises that in a similar but unrelated case, In Re: Garland Supermarket Inc. the FNS discipline office (perhaps quite unintentionally) let slip out that in addition to the Chapter 10 of Handbook #318, the FNS has issued an entire series of policy statements and "clarification" letters which constitute guideline memoranda impacting discipline in general, but which in particular heavily determine when the agency is to impose disqualification instead of imposing CMP for credit sales type violations. Without disclosure of the FNS Handbook #318 and all other secret policy statements and guideline memoranda which are being employed against me, I cannot be fairly or realistically expected to properly oppose the instant motion, nor properly prepare for trial.



FNS WRONGFUL REFUSAL TO SUBSTITUTE A CMP FOR DISQUALIFICATION

5. The refusal of FNS to substitute a civilian monetary penalty in lieu of a disqualification is wrongful, arbitrary and capricious and an abuse of discretion. First, the defendant has not shown that any neighboring store carries the same variety of food staples at comparable prices all of which is indicated under the regulation for denying a CMP to this licensee. The nearest store is "JD 248" four blocks away, and even that my patrons do not wish to use because it does not have quick convenient service to offer. Neither has the agency shown that any neighboring store offers the same quick stop convenience as my store. Again, how can I be expected to challenge the hidden CMP criteria rules, regulations, policies, guidelines and their proposed application to the facts of my case when I do not know nor my counsel nor even the Court knows what they are?

6. Second, virtually all the stores which FNS claims are "nearby" are, by defendant's own Exhibits (maps) over ~ mile away from deponent's store.<sup>1</sup> The "guidelines" of the agency to the effect that any store within one mile of the disqualification store satisfies the agency's rules for lack of neighborhood hardship and thus denial of a CMP is entirely irrational, arbitrary and capricious. A one mile rule in a city as opposed to non urban environments simply flies in the face of what all know to be true in the inner city; the presence of high numbers of indigents with no private transportation, combined with high numbers of the elderly, the infirm, and the public transportation access challenged.

<sup>1</sup>The only store less than 1/2 mile away is "JD 248 Food Corp." and that has no inventory convenience for residents; it include long lines and waits.

7. It is also arbitrary and capricious and an abuse of discretion for the agency to have waived either the requirements (which many annexed exhibits show are mere precatory guidelines) in the CMP regulations when USDA (FNS) granted a CMP in all the cases annexed hereto as Exhibits ("A-K"), yet to single out my store in refusing to grant a CMP "based on the regulation's requirements" .

WHEREFORE, I respectfully requests denial of the motion for summary judgment by defendant.

Sworn to before me this  
7 day of August 2008

*Li: iD JZ 51*  
NOTARY PUBLIC

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FRANKLYN F. LUGO

08 CN. 2960 (RJS)

UNITED STATES DEPARTMENT OF AGRICULTURE  
SOUTHERN DISTRICT OF NEW YORK

FRANKLYNF. LUGO,

Plaintiff,

- against -

UNITED STATES OF AMERICA,

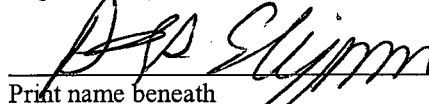
Defendant.

**AFFIRMATION IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

CODELIA & SOCORRO, P.c.  
Attorney( s) for Plaintiff( s)  
1967 Turnbull Avenue, Suite #6  
Bronx, New York 10473  
(718) 931-2575

To

Signature (Rule 11 Certification)



Print name beneath

PETER R. SHIPMAN #9780

Service of a copy of the within is hereby admitted.

Dated:





*United States Attorney  
Southern District of New York*

*100 Church Street  
New York, New York 10007*

January 29, 1997

Ernest Codelia  
1967 Turnball Avenue  
Bronx, NY 10473

Re: 1278 Felix Grocery, Inc. v. Food and Consumer  
Service, U.S. Department of Agriculture  
96 Civ. 7333 (KMW)

Dear Mr. Codelia:

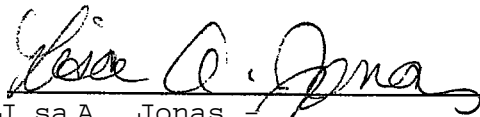
Enclosed is a copy of the Stipulation of Settlement that was So Ordered by the Court. Pursuant to paragraph 3 of the Stipulation, please pay the first installment as soon as possible.

Thank you.

Very truly yours,

MARY JO WHITE  
United States Attorney

By:

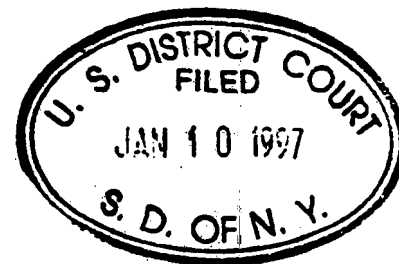
  
L.J. A. Jonas,  
Assistant United States Attorney  
Telephone: (212) 385-6367

Enc.

LAJ/ap

Wooden

MARY.JO WHITE  
United States Attorney for the  
Southern District of New York  
By: LISA A. JONAS  
100 Church Street, 19th Floor  
New York, New York 10007  
Tel. No.: (212) 385-6367



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
1278 FELIX GROCERY, INC.

Plaintiff,

- against -

FOOD AND CONSUMER SERVICE,  
UNITED STATES DEPARTMENT OF  
AGRICULTURE,

Defendant.

STIPULATION AND  
ORDER OF SETTLEMENT

96 Civ. 7333 (KMW)

----- X

WHEREAS plaintiff 1278 Felix Grocery, Inc.

("plaintiff") filed this action seeking to set aside an administrative decision, dated August 6, 1996, of the United States Department of Agriculture ("USDA" or "defendant"), reviewing and sustaining an earlier USDA decision disqualifying plaintiff from the Food Stamp Program for one year;

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and between the undersigned, as follows:

1. Plaintiff agrees to withdraw this action with prejudice and without costs, expenses or attorneys' fees.
2. Plaintiff agrees to pay to defendant a total amount of \$17,000.
3. The above-referenced amount shall be paid in 12 installments, by certified check made payable to the "United States Department of Treasury." The first installment in the

Woods

MARY JO WHITE

United States Attorney for the  
Southern District of New York  
By: LISA A. JONAS  
100 Church Street, 19th Floor  
New York, New York 10007  
Tel. No. : (212) 385-6367

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -X  
1278 FELIX GROCERY, INC.

Plaintiff,

- against -

FOOD AND CONSUMER SERVICE,  
UNITED STATES DEPARTMENT OF  
AGRICULTURE,

Defendant.

STIPULATION AND  
ORDER OF SETTLEMENT

96 Civ. 7333 (KMW)

- - - - -X

WHEREAS plaintiff 1278 Felix Grocery, Inc.

("plaintiff") filed this action seeking to set aside an  
administrative decision, dated August 6, 1996, of the United  
States Department of Agriculture {"USDA" or "defendant"},  
reviewing and sustaining an earlier USDA decision disqualifying  
plaintiff from the Food Stamp Program for one year;

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and  
between the undersigned, as follows:

1. Plaintiff agrees to withdraw this action with  
prejudice and without costs, expenses or attorneys' fees.

2. Plaintiff agrees to pay to defendant a total  
amount of \$17,000.

~. The above-referenced amount shall be paid in 12  
installments, by certified check made payable to the "United  
States Department of Treasury." The first installment in the

amount of \$1,416.67, shall be due upon notice of the entry of this Stipulation and Order of Settlement. The ensuing 1.1 installments, each in the amount of \$1,416.67, shall be due on the first of each month beginning on February 1, 1997. Said checks shall be delivered on or before those dates to the United States Attorney's Office, Southern District of New York, 100 Church Street, 19th Floor, New York, New York 10007, Attention: A.U.S.A. Lisa A. Jonas.

4. Plaintiff agrees to provide a \$1,521.00 bond or letter of credit to the United States Department of Agriculture, New York City Field Office, pursuant to 7 U.S.C. § 2021, within 30 days of this Stipulation and Order of Settlement. Said bond or letter of credit shall be delivered to: Angela Mackey, Food and Consumer Service, U.S.D.A., 201 Varick Street, Room 609, New York, New York 10014, and shall remain in force for the duration of plaintiff's participation in the Food Stamp Program.

5. If plaintiff fails to pay any installment when due or to provide the above-referenced bond or letter of credit; plaintiff shall be deemed in default of this Stipulation and Order of Settlement and agrees: (1) to an automatic one-year disqualification from the Food Stamp Program commencing on the 5th day of any month for which there is non-payment of an installment; (2) to waive its right to an administrative or judicial review of such disqualification; (3) that the Government shall retain any portion of the total amount of \$17,000 that plaintiff may have already paid; and (4) that the balance due on the total amount of \$17,000 shall be due to the Government.



immediately.

6. Plaintiff further agrees to comply with all of the applicable laws and regulations of the Food Stamp Program, to fulfill its obligations as set forth in this Stipulation and Order of Settlement' and to be placed on probation for a one-year period commencing from the date of the execution of this Stipulation and Order of Settlement. If a random inspection during this period of probation reveals any violation of the Food stamp Act of 1977, as amended, 7 U.S.C. §§2011 ff. gg. (the "Food Stamp Act"), committed by plaintiff or any agent or employee of plaintiff, plaintiff agrees (1) to an automatic one-year disqualification from the Food Stamp Program; (2) to waive its right to any administrative or judicial review of such disqualification; (3) that the Government shall retain any portion of the total amount of \$17,000 that plaintiff may have already paid; and (4) that the balance due on the total amount of \$17,000 shall be due to the Government immediately.

7. Defendant and plaintiff acknowledge, understand and agree that this stipulation and Order of Settlement sets forth the entire agreement between the parties and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter hereof.

8. Plaintiff acknowledges and represents that in executing this Stipulation and Order of Settlement, it does not and has not relied upon any representations or statements other than those contained herein, by the USDA, or any of the USDA's agent, officers, representatives or attorney; with regard to the

subject matter, basis or effect of this Stipulation and Order of Settlement.

9. This Stipulation and Order of Settlement shall be binding upon plaintiff and its legal representatives, successors and assigns.

10. This Stipulation and Order of Settlement may be presented to the Court to be so ordered without any further notice to the parties.

11. This Court shall retain jurisdiction over all matters concerning this Stipulation and Order of Settlement.

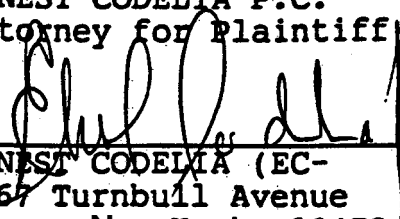
Dated: New York, New York  
 September 1, 2008  
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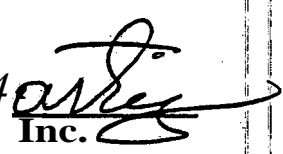
MARY JO WHITE  
 United States Attorney for the  
 Southern District of New York  
 Attorney for Defendant

By:           O. J. O'            
 LISA A. JONAS (EL-9522)  
 Assistant United States Attorney  
 100 Church Street, 19th Floor  
 New York, New York 10007  
 Tel. No.: (212) 385-6367

ERNEST CODELIA P.C.  
Attorney for Plaintiff

By:

  
ERNEST CODELIA (EC-  
1967 Turnbull Avenue  
Bronx, New York 10473  
Tel. No.: (718) 931-2575

  
(F er)...1 144  
1278 Felix Grocery, Inc.  
By: Felix Martinez  
President and Owner

SO ORDERED: / - G. - if-;r

..UMJA.. YV1 ~  
UNITED STATES DISTRICT JUDGE



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Exhibit B

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MARY JO WHITE  
United states Attorney for the  
Southern District of New York.  
Attorney for the Defendant United  
States Department of Agriculture  
By: RAMON E. REYES, JR. (RR-5545)  
Assistant United States Attorney  
100.Church Str~et, 19th Floor  
New York, New York 10007  
Telephone: (212) 637-2740

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK X

PEDRO SANTANA, 74 NAGLE  
GROCERY,

Plaintiff,

-against-

UNITED STATES DEPT. OF AGRICULTURE,  
FOOD AND CONSUMER SERVICE,

Defendant. X

STIPULATION AND  
ORDER OF SETTLEMENT  
AND DISMISSAL

98 Civ. 6150 (SHS)

WHEREAS plaintiff Pedro Santana, doing business as 74 Nagle Grocery ("plaintiff"), filed this action seeking to set aside a decision, dated July 23, 1998, of the United States Department of Agriculture, Food & Nutrition Service ("FNS" or "defendant") disqualifying plaintiff for six months from the Food Stamp Program;

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and between the undersigned, that this action shall be dismissed with prejudice and without costs, expenses, or attorney's fees, subject to the following terms and conditions:

1. Plaintiff agrees to pay defendant a fine of \$25,000<sup>11</sup> in full settlement of the claim herein.

2. The fine described in en 1 shall be due in monthly installments, by certified check or money order made payable to the

United States Department of the Treasury, and shall be delivered to the United States Attorney's Office, Southern District of New York, 100 Church Street, New York, New York 10007, Attn: Ramon E. Reyes, Jr. The first installment, for \$3,000.00, shall be due seven (7) days after this Stipulation and Order of Settlement and Dismissal ("stipulation") has been signed by all parties and "so ordered" by the Court. The remaining \$22,000.00 shall be paid in eleven (11) monthly installments of \$2,000.00 each, with each installment due on the first of every month, beginning on November 1, 1998 and extending through September 1, 1999. Said certified checks or money orders shall be delivered to the United States Attorney's Office, Southern District of New York, 100 Church Street, New York, New York 10007, Attn: Ramon E. Reyes, Jr.

3. Plaintiff agrees to provide, within fifteen (15) days of the execution of this Stipulation, a \$4,243.00 bond or letter of credit to the United States Department of Agriculture, New York City Field Office, pursuant to 7 U.S.C. § 2021. Said bond or letter of credit shall be delivered to: Angela Mackay, Officer In Charge, Food and Nutrition Service, United States Department of Agriculture, 252 7th Avenue, Section 4R, New York, New York 10001, and shall remain in force for the duration of the one (1) year probation period referenced to in , 5 below.

4. If plaintiff fails to provide said bond or letter of credit when due, plaintiff shall be deemed in default of this stipulation and agrees (a) to an automatic six (6) month disqualification from the Food Stamp Program commencing the day

after the due date of said bond or letter of credit; (b) to waive his right to an administrative or judicial review of such disqualification; and (c) to forfeit any portion of the total fine in the amount of \$25,000.00 that plaintiff may have already paid.

5. Plaintiff further agrees to comply with all applicable laws and regulations of the Food stamp Program; to fulfill his obligations as set forth in this Stipulation; and to be placed on probation for a one (1) year period commencing with the execution of this Stipulation. If a random inspection during this period of probation reveals any violation of the Food Stamp Act of 1971, as amended, 7 U.S.C. §§ 2011-29, committed by any principal or employee or agent of the plaintiff, plaintiff agrees (a) to FNS's determination of a violation and the imposition of whatever penalty may be applicable to such violation under the Food Stamp Program; (b) to waive his rights to an administrative or judicial review of FNS's determination and imposition of such penalty; and (c) to forfeit any portion of the total fine in the amount of \$25,000.00 that plaintiff may have already paid, as well as the \$4,243 bond or letter of credit referenced in ~ 3 above.

6. The FNS hereby modifies its decision, dated July 23, 1998, disqualifying plaintiff from the Food Stamp Program for a period of six months. Defendant agrees that, subject to the terms of this Stipulation, plaintiff shall continue to have the privilege of full participation in the Food Stamp Program upon the execution of this Stipulation.

7. Defendant and plaintiff acknowledge, understand and agree that this Stipulation sets forth the entire agreement between the parties relating to the subject matter hereof.


8. Plaintiff acknowledges and represents that in executing this Stipulation he does not and has not relied upon any representations or statements other than those contained herein by the United States Department of Agriculture or its agents, officers, representatives or attorneys with regard to the subject matter, basis or effect of this Stipulation.

9. This agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

10. This Stipulation may be so ordered by the Court without any further notice to the parties.

September 1, 1998

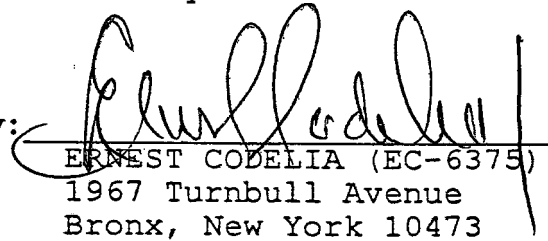
By:

  
PEDRO SANTANA  
Plaintiff

ERNEST CODELIA, P.C.  
Attorneys for Plaintiff

September 1, 1998

By:

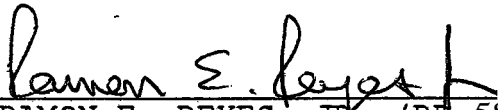
  
ERNEST CODELIA (EC-6375)  
1967 Turnbull Avenue  
Bronx, New York 10473  
Tel. No.: (718) 931-2575



MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
Attorney for Defendant FNS

September 11, 1998

By:

  
RAMON E. REYES, JR. (RE-5\$45)  
Assistant United States Attorney  
100 Church Street, 19th Floor  
New York, New York 100071  
Tel. No.: (212) 637-2740

Dated: New York, New York  
September \_\_, 1998

SO ORDERED:

United States District Judge

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MARY JO WHITE  
 United States Attorney for the  
 Southern District of New York  
 Attorney for the Defendant United  
 States Department of Agriculture  
 By: LISA R. ZORNBERG (LZ-1299)  
 Assistant United States Attorney  
 100 Church Street, 19th Floor  
 New York, New York 10007  
 Telephone: (212) 637-2720

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK  
 -----X

RAFAEL MARTINEZ,  
 WATSON FOOD CENTER, INC.

Plaintiffs,

-against-

UNITED STATES DEPT. OF AGRICULTURE,  
 FOOD AND CONSUMER SERVICE,

Defendants.

-----X

STIPULATION AND  
 ORDER OF SETTLEMENT  
AND DISMISSAL

00 Civ. 2970 (NRB)

WHEREAS plaintiff Raf,ael Martl,'nez,doing business as'  
 Watson Food Center ("plaintiff II),filed this ,actionseeking"~9,'1  
 set aside a decision, dated April 11, 2000, of the United Stiltiies  
 Department of Agriculture, Food & Nutrition Service ("FNS" o~  
 Idendant ") disqualifying plaintiff for six months from the !!~OOD  
 Stamp Program;

NOW, THEREFORE~ IT IS STIPULATED AND AGREED, by and between  
 the undersigned, that this action shall be dismissed with  
 prejudice and without costs, expenses, or attorney's fees,  
 subject to the following terms and conditions:

1. Plaintiff agrees that, within fifteen (15) days  
 after this Stipulation and Order of Settlement and Dismissal  
 (IlStipulation<sup>11</sup>)has been signed by all parties and IIS0ordered II  
 by the Court (Ithe Due Date II), plaintiff shall:

(a) pay defendant a fine in the amount of \$3,000. Said fine shall be paid by certified check or money order made payable to the United States Department of the Treasury, and delivered by the Due Date to the United States Attorney's Office, Southern District of New York, 100 Church Street, New York, New York 10007, Attn: Lisa Zornberg; and

(b) provide a \$1,000 bond or letter of credit to the United States Department of Agriculture, New York City Field Office, pursuant to 7 U.S.C. § 2021. Said bond or letter of credit shall be delivered by the Due Date to: Angela Mackey, Officer In Charge, Food and Nutrition Service, United States Department of Agriculture, 201 Varick Street, Room 609 New York, New York 10014, and shall remain in force for the duration of the six month probation period referred to in ~ 3 below.

2. If plaintiff fails by the Due Date both to pay the \$3,000 fine and provide the \$1,000 bond or letter of credit, plaintiff shall be deemed in default of this Stipulation and ~ agrees (a) to an automatic six month disqualification from the Food Stamp Program commencing the day after the Due Date; (b) ~o waive his right to an administrative or judicial review of such disqualification; and (c) to forfeit any portion of the \$3,000 fine that plaintiff may have already paid.

3. Plaintiff further agrees to comply with all applicable laws and regulations of the Food Stamp Program; to fulfill his obligations as set forth in this Stipulation; and to be placed on probation for a six month period commencing with the

... }y/

execution of this Stipulation. If a random inspection during this period of probation reveals any violation of the Food Stamp Act of 1977, as amended, 7 U.S.C. §§ 2011-29, committed by any principal or employee or agent of the plaintiff, plaintiff agrees (a) to FNS's determination of a violation and the imposition of whatever penalty may be applicable to such violation under the Food Stamp Program; (b) to waive his rights to an administrative or judicial review of FNS's determination and imposition of such penalty; and (c) to forfeit the \$3,000 fine and \$1,000 bond letter of credit referenced in , 1 above.

4. The FNS hereby modifies its decision, dated April 11, 2000, disqualifying plaintiff from the Food Stamp Program for a period of six months. Defendant agrees that, subject to the terms of this Stipulation, plaintiff shall continue to have the privilege of full participation in the Food Stamp Program upon the execution of this Stipulation.

5. Defendant and plaintiff acknowledge, understand and agree that this Stipulation sets forth the entire agreement between the parties relating to the subject matter hereof.

6. Plaintiff acknowledges and represents that in executing this Stipulation he does not and has not relied upon any representations or statements other than those contained herein, by the United States Department of Agriculture or its agents, officers, representatives or attorneys with regard to the subject matter, basis or effect of this Stipulation.

7. This agreement shall be binding upon and inure to" the benefit of the parties and their ,respective legal representatives, successors a~d assigns.

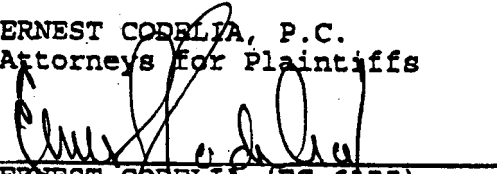
8. This Stipulation may be so ordered by the Court without any further notice to the parties.

Dated: New York, New York  
June \_\_, 2000

/ ~t~L~C'~  
RAFAEL MARTINEZ, Plaintiff

ERNEST CODELIA, P.C.  
Attorneys for Plaintiffs

By:

  
ERNEST CODELIA (EC-6375)  
1967 Turnbull Avenue  
Bronx, New York 10473  
Tel: (718) 931-2575

MARY JO WHITE  
United States Attorney for the  
Southern District of New York  
Attorney for Defendants

By:

||  
~ - ~  
LISA R. ZORNBERG (LZ~99)  
Assistant United States Attorney  
100 Church Street -- 19th Floor  
New York, New York 10007  
Tel: (212) 637-2720

SO ORDERED:

  
UNITED STATES DISTRICT JUDGE

6/19/00

Exhibit D

**Ernest Cadelia, P.C.**

*Attorneys-at-Law*

1967 Turnbull Avenue~  
Bronx. New York 10473  
Tel: (718) 931-2575  
Fax: (718) 931-1121

December 27,2000

Teudo Gonzalez  
c/o Grocery Store  
931 Fox Street  
Bronx, New York

Re: Teudo Gonzalez  
vs. U.S. Department of Agriculture

Dear Mr. Gonzalez:

For your records, enclosed herewith please find a Stipulation and Order with reference to your violation of the food stamp regulations with a copy to the United States Attorney paying a \$3,500.00 penalty, and also a letter to Banco Popular with a check that was given to them for \$1,000.00 for the letter of credit.

Note that the bank is forwarding the Letter of Credit directly to Angela Mackey at the United States Department of Agriculture's office at 201 Varick Street, New York, New York.

If there are any questions on this matter please advise.

Very truly yours,

Ernest J. Codelia, Esq.

EJC/ms  
enc.





Ernest Codelia, P.C.

*Attorneys-at-Law*

1967 Turnbull Avenue  
Bronx, New York 10473  
Tel: (718) 931-2575  
Fax: (718) 931-1121

December 19, 2000

United States Attorney's Office  
Southern District of New York  
100 Church Street - 19th Floor  
New York; New York 10007  
Attn.: Edward Chang

Re: Teudo Gonzalez  
Gonzalez Deli-Meat Grocery  
vs. U.S. Department of Agriculture  
Food and Consumer Service  
Docket No. 00 Civ. 8458 (AGS)

Dear Counselor:

Enclosed find the undersigned's escrow check in the sum of \$3,500.00 payable to the United States Treasury, in compliance with Paragraph 2 of Stipulation of Settlement dated December 11, 2000.

Very truly yours,

  
Ernest J. Codelia, Esq.

EJC/ms

IOLA-ERNEST CODELIA PC  
ATTORNEY ESCROW ACCOUNT  
1967 TURNBULL AVE.  
BRONX, NY 10473

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PAY  
TO THE  
ORDER OF

United States Treasury

DATE 12/19/2000

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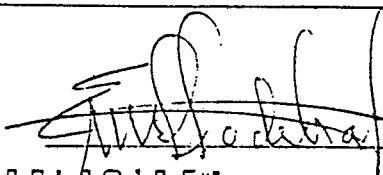


CHASE

The Chase Manhattan Bank  
784 Castle Hill Avenue  
Bronx, NY 10473

Teudo Gonzalez v. USA

FOR 00 Civ-8458 (AGS)



⑈002542⑈ ⑆021000021⑆357068460165⑈

Ernest Codelia, P.C.

*Attorneys-at-Law*

1967 Turnbull Avenue  
Bronx, New York 10473  
Tel: (718) 931-2p~5  
Fax: (718) 931-1121

**AXED**  
12/21/00  
Tel. # (718) 299-7248

December 21, 2000

Via Fax (718) 299-7367  
Attn.: Miguel Vargas, Manager  
Banco Popular  
1046 Southern Boulevard  
Bronx, New York 10459

Re: Gonzalez Deli-Meat Grocery  
931 Fox Street  
Bronx, New York  
Account No. 29240-20

Dear Mr. Vargas:

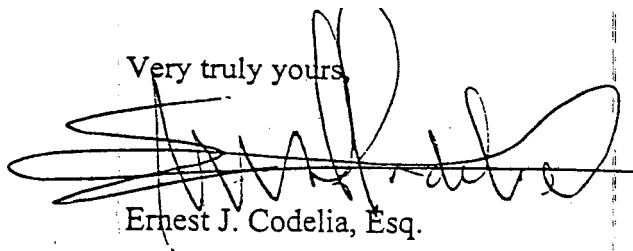
I have called your offices two days running and I have not been able to get a response from you, although I have left the message indicating what I am calling about.

Please note that I need a \$1,000.00 letter of credit made to the United States Department of Agriculture, Northeast Regional Office from your reference above depositor.

It is imperative that I be advised what are the steps to procure this letter of credit which will be open indefinitely until such time as Mr. Gonzalez terminates his account with the Department of Agriculture.

Please advise as soon as possible cost and the steps required to procure said letter, noting that I need to have this letter no later than December 27th, 2000 and if I do not have same Mr. Gonzalez can be terminated from the Food Stamps Program ..

Very truly yours,



Ernest J. Codelia, Esq.

EJ C/ng

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

- - - - -

TEUDO GONZALEZ  
GONZALEZ DELI-MEAT GROCERY,

.Plaintiffs,

- against -

00 Civ. 8458 (AGS)

U.S. DEPT. OF AGRICULTURE  
FOOD & CONSUMER SERVICE,

Defendant.

- - - - -

STIPULATION AND ORDER

WHEREAS plaintiff Teudo Gonzalez is the sole proprietor, owner and operator of plaintiff Gonzalez Deli-Meat Grocery (the Grocery); and

WHEREAS plaintiffs filed this action seeking to set aside a decision, dated July 12, 2000, of the United States Department of Agriculture, Food and Nutrition Service ("FNS"), disqualifying plaintiff for six months from the Food Stamp Program (the Program);

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and between the undersigned, that this action shall be dismissed with prejudice and without costs, expenses, or attorney's fees, subject to the following terms and conditions:

1. This Stipulation and Order (the Agreement) shall take effect only after being signed by all parties and is ordered" by the Court. The Effective Date shall be the day that plaintiffs' counsel receives notice that the Stipulation and

Order is in effect.

2. Plaintiffs agree to pay FNS a fine of \$3,500 in full settlement of the claim herein.

3. The fine described in paragraph 2 shall be paid by certified check or money order, payable to the United States Department of the Treasury, and shall be due seven days after the Effective Date. Payment shall be made to the following address:

United States Attorney's Office  
Attn: Edward Chang  
Southern District of New York  
100 Church St., 19th floor  
New York, NY 10007

4. pursuant to 7 U.S.C. § 2021, plaintiffs shall provide a \$1000 bond or letter of credit to the United States Department of Agriculture, Northeast Regional Office that shall remain valid at all times during which plaintiffs are authorized to participate in the Program.

5. The bond or letter of credit described in paragraph 4 shall be delivered to the following address no later than fifteen days after the Effective Date:

Ms. Angela Mackey  
Officer in Charge  
USDA Food and Nutrition Service  
201 Varick St. rID. 609  
New York, NY 10014

6. Plaintiffs shall be on probation for a six month period commencing with the Effective Date. Any violation of the Food Stamp Act of 1977, as amended, 7 U.S.C. §§ 2011-29, or the

regulations promulgated thereunder, committed by any principal, employee, or agent of the plaintiffs shall be deemed a violation of probation. " |

7. In the event of any violation of probation, plaintiffs agree (a) to FNS's imposition of whatever penalty may be applicable to such violation under the Program; (b) to waive any rights to an administrative or judicial review of whether a violation of probation occurred or of the penalty imposed; and (c) additionally, to forfeit the bond or letter of credit described in paragraph 4.

8. If plaintiffs fail to pay the fine described in paragraph 2 when due, or fail to provide the bond or letter of credit described in paragraph 3 when due, plaintiffs shall be in default. ; |

9. In the event of a default, plaintiffs agree (a) to an automatic disqualification from the Program commencing the day following the default; (b) to waive any right to administrative or judicial review of such disqualification; and (c) to forfeit the fine described in paragraph 2 and the bond or letter of credit described in paragraph 4. i |

10. Plaintiffs further agree to comply with all applicable laws and regulations of the Program and to fulfill their obligations as set forth in this Agreement.

11. The FNS hereby modifies its decision, dated July

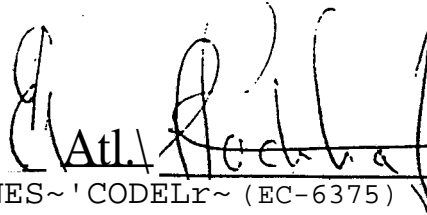
12, 2000, disqualifying plaintiffs from the Program for a period of six months. The FNS agrees that, subject to the terms of this Agreement, plaintiffs shall continue to have the privilege of full participation in the Program.

12. Plaintiffs and the FNS acknowledge, understand, and agree that this Agreement sets forth the entire agreement between the parties relating to the subject matter hereof. Plaintiffs specifically acknowledge and represent that in executing this Agreement, they do not and have not relied upon any representations or statements other than those contained herein by the United States Department of Agriculture or its officers, employees, agents, or attorneys with respect to the subject matter, basis, or effect of this Agreement.

13. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

14. This Agreement may be "so ordered" by the Court without further notice to the parties.

Dated: December 11, 2000  
Bronx, NY




ERNEST CODELr (EC-6375)  
Attorney for Plaintiffs  
1967 Turnbull Ave. suite #6  
Bronx, NY 10473  
(718) 931-2575

Dated: December 11, 2000  
New York, NY

MARY JO WHITE  
Attorney for Defendant

By:

  
EDWARD CHANG (EC-8218)  
Assistant United States Attorney  
100 Church St. 19th floor  
New York, NY 10007  
(212) 637-2736

Dated: December \_\_, 2000  
New York, NY

SO ORDERED:

 HWARTZ Jv/rr /0"  
UNITED STATES DISTRICT JUDGE





MARY 10 WHITE

United States Attorney for the  
Southern District of New York

By: Elvill Y S. RELSBAUN (ER-0977)

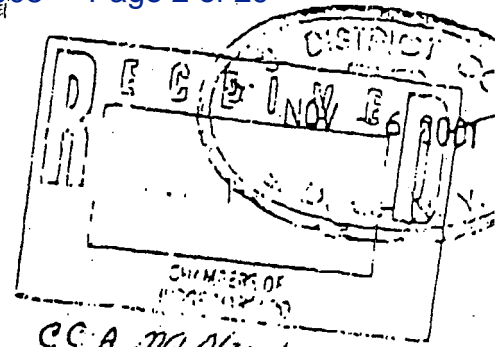
Assistant United States Attorney  
100 Church Street

New York, New York 10007

Temporary Phone: (646) 523-6478

Temporary Fax: (718) 254-6478

ORIGINAL



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

VICTORINO MENDEZ and  
MENDEZ'S GROCERY,

Plaintiff,

-v.-

01 Civ. 6-87 (V.M)

THE UNITED STATES DEPARTMENT  
OF AGRICULTURE,

STIPULA 1108  
AND ORDER

Defendant.

WHEREAS Victorino Mendez, doing business as Mendez's Grocery located at 655 Courtland Avenue, Bronx, New York 10451 ("plaintiffs"), filed this action on July 16, 2001, seeking to Set aside a decision dated June 14, 2001, of the United States Department of Agriculture, Food & Nutrition Service ("FNS" or "defendant") disqualifying plaintiffs for three (3) years from the Food Stamp Program;

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and between the undersigned, that this action shall be dismissed with prejudice and without costs, expenses, or attorney's fees, subject to the following terms and conditions:

1. Plaintiffs agree to pay defendant a fine of \$40,000 in full settlement of the claim herein.

1. The fine described in V I shall be due in monthly installments, by certified check or money order made payable to the United States Department of the Treasury, and shall be delivered to the United States Attorney's Office, Financial Litigation Unit, Southern District of New York, 100 Church Street, New York, New York 10007, or to another location as the United States Attorney's Office may hereinafter direct. The first installment, for \$1,000, shall be due seven (7) days after this Stipulation and Order of Settlement and Dismissal ("Stipulation") has been signed by all parties and is ordered by the Court. The remaining \$39,000 shall be paid in thirty-nine (39) equal monthly installments of \$1,000 each, with each installment due on the first of every month, beginning on November 1, 2001 and extending through February 1, 2005.

3. *Plaintiffs* agree to provide, within fifteen (15) days of the execution of this Stipulation and Order, signed by all parties and as ordered by the Court, a \$1,533 bond or lender of credit to the United States Department of Agriculture, New York City Field Office, pursuant to 7 U.S.C. § 2021. Said bond or lender of credit shall be delivered to; Angela Mackey, Officer in Charge, Food and Nutrition Service, United States Department of Agriculture, New York City Field Office, 201 Varot Street, Room 609, New York, New York 10014, and shall remain valid at all times during which the firm is authorized to participate in the program.

4. If plaintiffs fail to provide said bond or lender of credit when due, plaintiffs shall be deemed in default of this Stipulation and agree (a) to an automatic three-year disqualification from the Food Stamp Program commencing the day after the due date of

said bond or letter of credit; (b) to waive their *rights* to an administrative or judicial review of such disqualification; and (c) to forfeit any portion of the total fine in the amount of \$40,000 that plaintiffs may have already paid.

5. Plaintiffs further agree to comply with all applicable laws and regulations of the Food Stamp Program; to fulfill the obligations as set forth in this Stipulation; and to be placed on probation for a 40-month period commencing with the execution of this Stipulation. If a random inspection or analysis of Electronic Benefits Transfer transaction data during this period of probation reveals any violation of the Food Stamp Act of 1977, as amended, 7 U.S.C. §§ 2011.29, committed by any principal or employee or agent of the plaintiffs, plaintiffs agree (a) to FNS's determination of a violation, and the imposition of whatever penalty maybe applicable to such violation under the Food Stamp Program; (b) to waive their rights to an administrative or judicial review of FNS's determination and imposition of such penalty; and (c) to forfeit any portion of the total fine in the amount of \$40,000 that plaintiffs may have already paid, as well as the \$1,533 bond or letter of credit referenced in ~ 3 above.

6. The FNS hereby modifies its decision, dated June 14, 2001, disqualifying plaintiffs from the Food Stamp Program for a period of three years. Defendant agrees that, subject to the terms of this Stipulation, plaintiffs shall continue to have the privilege of full participation in the Food Stamp Program upon the execution of this Stipulation.

7. Defendant and plaintiffs acknowledge and understand and agree that this Stipulation sets forth the entire agreement between the parties relating to the subject matter itself.

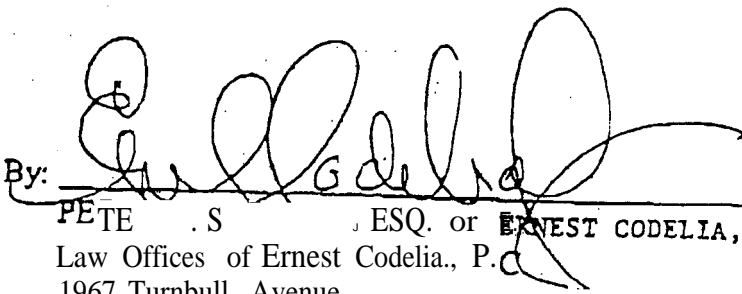
g. Plaintiffs acknowledge and represent that in executing this Stipulation they do

not and have not relied upon any representations or statements other than [hoSe~Conlajncd herein. by lbe United Srates Depamnenrof Agriculture or its agents, officers. representatives or attorneys with regard to the s\lbject maner, basis Or effect of tlhis Stipulation.

9. nUS 'agreemenr shall be binding upon and inure ro rhebenetir of the parties and their respective legal representatives, SUccessors and assigns.

10. This Stipulation may be so ordered by the Court without 31ly furthernoxice £0 the parties.


Date: October ,2001  
v -"

By:   
PETE . S . ESQ. or ERNEST CODELIA, ES  
Law Offices of Ernest Codelia, P.C.  
1967 Turnbull Avenue  
Bronx, f.Tew York 10473  
Telephone: (718) 931-2575  
Fax: (718) 931-1121  
Anomey for Plaintiffs

Date: October2t 2001

BY.&~ ~  
Elvill...Y S. rSBAUM (ER-0977)  
Assistant United States Anomey  
100 Church Street - L9rh Floor  
New York, New York 10007  
Temporary Telephone: (646) 523.6478  
Temporary Fax: (718) 254-6478

Dated: / ( ~ ~ :Jfa/ " .;  
SO ORDERE D:

  
The Hon. Victor Marrero  
United States Disaict Judge





U.S. Department of Justice

*United States Attorney  
Southern District of New York*

*100 Church Street  
New York, New York 10007*

October 25, 2001

By Federal Express

Ernest J. Codelia  
Peter R. Shipman  
Ernest Codelia, P.C.  
1967 Turnbull Avenue  
Bronx, NY 10473

Re: Victorino Mendez v. USDA, et al.  
01 Civ. 6387 (VM)

Dear Mr. Codelia:

Enclosed is an original fully executed Stipulation and Order in settlement of the above-referenced action, which I filed with the Court earlier today.

Thank you for your cooperation.

Sincerely,

MARY JOWHITE  
United States Attorney

By: . BAUM .

Assistant United States Attorney  
Temporary Phone: (718) 422-5676  
Temporary Fax: (718) 254-6478

Enclosure

MARY JO WHITE

United States Attorney for the  
Southern District of New York

By: EMILY S. REISBAUM (ER-0977)

Assistant United States Attorney  
100 Church Street'

New York, New York 10007

Temporary Phone: (646) 523-6478

Temporary Fax: (718) 254-6478

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

VICTORINO MENDEZ and  
MENDEZ'S GROCERY,

Plaintiff,

-v.-

01 Civ. 6~87 (VM)

THE UNITED STATES DEPARTMENT  
OF AGRICULTURE,

STIPULATION  
AND ORDER

Defendant.

-----X

WHEREAS Victorino Mendez, doing business as Mendez's Grocery located at 655 Courtland Avenue, Bronx, New York 10451 ("plaintiffs"), filed this action on July 16, 2001, seeking to set aside a decision, dated June 14, 2001, of the United States Department of Agriculture, Food & Nutrition Service ("FNS" or "defendant") disqualifying plaintiffs for three (3) years from the Food Stamp Program;

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and between the undersigned, that this action shall be dismissed with prejudice and without costs, expenses, or attorney's fees, subject to the following terms and conditions:



1. Plaintiffs agree to pay defendant a fine of \$40,000 in full settlement of the claim herein.

2. The fine described in ~ 4 shall be due in monthly installments, by certified check or money order made payable to the United States Department of the Treasury, and shall be delivered to the United States Attorney's Office, Financial Litigation Unit, Southern District of New York, 100 Church Street, New York, New York 10007, or to another location as the United States Attorney's Office may hereinafter direct. The first installment, for \$1,000, shall be due seven (7) days after this Stipulation and Order of Settlement and Dismissal ("Stipulation") has been signed by all parties and "so ordered" by the Court. The remaining \$39,000 shall be paid in thirty-nine (39) equal monthly installments of \$1,000 each, with each installment due on the first of every month, beginning on November 1, 2001 and extending through February 1, 2005.

3. Plaintiffs agree to provide, within fifteen (15) days of the execution of this Stipulation and Order, signed by all parties and So Ordered by the Court, a \$1,533 bond or letter of credit to the United States Department of Agriculture, New York City Field Office, pursuant to 7 U.S.C. § 2021. Said bond or letter of credit shall be delivered to: Angela Mackey, Officer In Charge, Food and Nutrition Service, United States Department of Agriculture, New York City Field Office, 201 Varick Street, Room 609, New York, New York 10014, and shall remain valid at all times during which the firm is authorized to participate in the program.

4. If plaintiffs fail to provide said bond or letter of credit when due, plaintiffs shall be deemed in default of this Stipulation and agree (a) to an automatic three-year disqualification from the Food Stamp Program commencing the day after the due date of



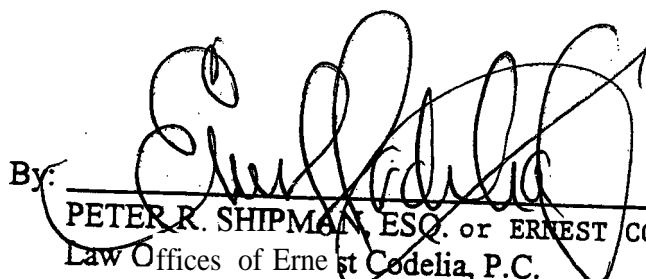
not and have not relied upon any representations or statements other than those contained herein, by the United States Department of Agriculture or its agents, officers, representatives or attorneys with regard to the subject matter, basis or effect of *this* Stipulation.

9. This agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

10. This Stipulation may be so ordered by the Court without any further notice to the parties.

Date: October ,2001

" ) -v

By:   
PETER R. SHIPMAN, ESQ. or ERNEST CODELIA,  
Law Offices of Ernest Codelia, P.C.  
1967 Turnbull Avenue  
Bronx, New York 10473  
Telephone: (718) 931-2575  
Fax: (718) 931-1121  
Attorney for Plaintiffs

Date: October 21, 2001

BY: ~  
EMILY S. ISBAUM (ER-0977)  
Assistant United States Attorney  
100 Church Street - 19th Floor  
New York, New York 10007  
Temporary Telephone: (646) 523-6478  
Temporary Fax: (718) 254-6478

Dated: \_\_\_\_\_  
SO ORDERED: \_\_\_\_\_

The Hon. Victor Marrero  
United States District Judge



JUL-20-2001 12:24

U.S. ATTY'S OFFICE

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01 Civ.- 30.. (LTS)

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**Defendant.**

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**action seeking to set aside a decision, dated March 13,**

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Hue~it.iol' Service ("PNS. or lld.fencSant") 4:'aqual1fyiq

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**NOW, THEREFORE, IT IS HEREBY STIPULATED AND**

**AGREED, by and between the parties hereto, through their**

**respective undersigned counsel, that:**

**1. The Complaint herein is hereby dismissed with**

prejudice, withoue cost.sor at.t.~r.ceY8. tee. t.oeithe~ of the

**parties hereto.**

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U.S. ATTY'S OFFICE

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2. Plaintiff agrees to pay defendant a sum of \$7,111.00 in full settlement of the claim herein. This sum shall be due in six (6) months installments by certified check or money order made payable to the United States Department of the Interior, and shall be delivered to the United States Attorney's Office, Southern District of New York, 100 Church Street, New York, New York 10007. A sum of \$2,119.20 shall be due on the 7th day after this Stipulation and Order of Discontinuance ("Stipulation and Order") has been signed by Plaintiff and Defendant by the Court. The remaining five installments shall be paid in full. (SJ equ.; al DeAly Incealllllenta of \$2.1J.'16 ea=, witA each i\_t.aUment due on the f~nl~oC evuy .nell, ~\_ ~~!N:tt 1, 2001 aJad exteA~Zlg t:N'Ough Oecember 1~ 2001.

3. Pursuant to 7 U.S.C.J 2021, plaintiff agrees to provide, within fifteen (15) days of the execution of this Stipulation and Order, a bond or letter of credit in the amount of \$2,119.00 to the United States Department of Agriculture, New York City Field Office. Said bond or letter of credit shall be delivered to: Angela MacLacey, Officer in Charge, Good and Nutrition Section •• United States Department of Agriculture, 201 Varick Street, New York, New York

JUL-20-2001 12:24

U.S. ATTY'S OFFICE

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York 10014, aDd shall remain valid at all time. cSw::Ingwhich  
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**the \$2,119.00 bond or letter of credit referenced in § 3**  
**above.**

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 13, a001., cSiequU1fyillg pl.aintiff ftoU the Food Stamp  
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 subject to the terms at ch1s Stipulation and Order,  
 plaintiff shall conclnue to have clle pl'l'vileg8 of full  
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7. The parties~adalQwledge. VAClerGCaACI an4 agr:-e  
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**agreement between the parties relating to the subject matter**  
**herein, and that no statements, representations, promises,**



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parties or their counsel that are not included herein shall  
be of any force or effect.

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respective legal representatives, successors and assigns.

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Plaintiff SBM SUPERMARKET  
CORPORATION

By: Alejandro Munoz  
Alejandrina Munoz

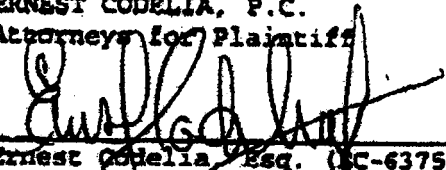
President

NEW YORK, NEW YORK SO ORDERED.


July 16, 2001

Laura Taylor Swain  
LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE

ERNEST CODELIA, P.C.  
Attorneys for Plaintiff

By:   
Ernest Codecia Esq. (EC-6375),  
1967 Turnbull Avenue  
Bronx, New York 10473  
Telephone: (718) 931-2575

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BY:   
ROSS L. MOWSOFF (RM-7271)  
Assistant: United States  
Attorney  
100 Church Street, 19th floor  
New York, New York 10007  
Telephone: (212) 637-2691

SO ORDERED:

L~J~~-JU-d-9-e

DATED

TOTC:it. p. 177

TOTAL P.e17



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANYOLINA VALENTIN,

Plaintiff,

-c~qainst-

02 Civ. 6833 (ec)

UNITED STATES DEPARTMENT OF  
AGRICULTURE, FOOD , NUTRITION  
SERVICE

Defendant.

-----X

WHEREAS plaintiff Anyolina Valentin ("Plaintiff"). owner of Anyolina Grocery , Heat Market ("AnyolinaGrocery"), 152 Nagle Avenue, New York, New York, filed this action seeking to set aside a detendnatian, dated May 8, 2002, of the United States Department of AgrlcultuJ:e, rood' Nutrition Service C"FNS"or "Oefendant", disqUalify<sup>ing</sup> Anyalina Grocery for six months from the Food Stamp Program;

WHERtAS. the par'Cies to this action seek to stipulate, consent and agree to .i complete and final settlement of all claim~ in this action, and to obtain an order from the Court encompassing the terms of this settlement (the "Stipulation and Order");

NOW, THENEFOR, IT IS STIPULATED AND AGRtEO, by and between the parties he!reto, through their respective undersigned counsel, that:

1. The above-captioned action Cthe "Act.ion") is hereby dismissed with prejudice, withou'C costs, expenses or attorneys' fees to ei'Cher side pur~uant 'CoRule 41(a) (1) of ~he Federal Rules

H"

of Civil Procedure, except that the parties agree that this Court will retain jurisdiction to enforce the terms of this Stipulation and Order.

2. Plaintiff agrees to pay Defendant the amount of \$12,000.00 (the "Settlement Amount") in connection with the resolution of the Action.

3. The Settlement Amount shall be due in eleven monthly installments, by certified check or money order made payable to the United States Department of the Treasury, and shall be delivered to the United States Attorney's Office, Southern District of New York, 100 Church Street, 19<sup>th</sup> Floor, New York, New York 10007, Attn: Financial Litigation Unit. The first installment, for \$2,000.00, shall be due seven (7) days after this Stipulation and Order has been signed by all parties and entered by the Court. The remaining \$10,000.00 shall be paid in the same manner as the first installment in ten (10) additional and equal monthly installments of \$1,000.00 each, with each installment due on the first of every month, beginning on December 1, 2002 and continuing through September 1, 2003.

4. Plaintiff agrees to provide, within fifteen (15) days of the date the Stipulation and Order is signed by the parties and entered by the Court, and pursuant to 7 U.S.C. § 2021, a bond or irrevocable letter of credit in the amount of \$1,000,000 to the United States Department of Agriculture, New York City Field Office. Said bond or letter of credit shall be delivered to:

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Angela Mack:ay, Officer In Charge, Food and Nutrition Service, United States Department of Agriculture, 201 Varick Street, Room 609, New York, New York 10014~ and shall remain in force at all times during which either Plaintiff or Valentin Grocery are authorized to participate in the Food Stamp program',

S. If Plaintiff fails to provide said bond or letter of credit when due, as set forth in paragraph 4 above, or permits said bond or letter of credit to lapse, Plaintiff shall be deemed in default of this Stipulation and Order, and he agrees (a) to an automatic six (6) month disqualification from the Food Stamp Program commencing the day after the due date of said bond or letter of credit; (b) to waive his right to an administrative or judicial review of such disqualification; and (e) to forfeit any portion of the Settlement Amount that Plaintiff may have already paid.

6. Plaintiff further agrees to comply with all applicable laws and regulations of the Food Stamp Program; to fulfill his obligations as set forth in this Stipulation and Order; and to be placed on probation for a one (1) year period commencing on the date that this Stipulation and Order is Signed by the parties and entered by the Court. If a random inspection or analysis of Electronic Benefit Transfer (EBT) data during this period of probation reveals any violation of the Food Stamp Act of 1977, as amended, 7 U.S.C. §§ 2011-29, committed by any principal or employee or agent of Plaintiff, Plaintiff agrees (a) to a

determination by FNS of a violation and the imposition of whatever penalty may be applicable to such violation under the Food Stamp Program: (d) to waive his rights to an administrative or judicial review of FNS's determination and imposition of such penalty; and (e) to forfeit any portion of the total Settlement Amount that Plaintiff has already paid, as well as the \$1,952.00 bond or letter of credit referenced in paragraph 4 above.

1. If Plaintiff fails to pay any of the installments set forth in paragraph 2, above in full on or before the due date, Plaintiff expressly consents to the entry of judgment against him in an amount equal to the Settlement Amount of \$12,000.00 plus interest thereon from the date of default.

8. In consideration of the full performance by Plaintiff of all his obligations under this Stipulation and Order, the MS hereby modifies its decision, dated May 8, 2002, disqualifying Valentin Grocery from the Food Stamp Program for a period of six months. Defendant agrees that, subject to the terms of this Stipulation and Order, Plaintiff shall continue to have the privilege of full participation in the Food Stamp Program as of the time that the Stipulation and Order is signed by the parties and entered by the Court.

9. The parties acknowledge, understand and agree that this Stipulation and Order sets forth the entire agreement between the parties relating to the subject matter of the Stipulation and Order, and that no statements, representations, promises,

agreement, or negotiations, oral Or otherwise, between the parties or their counsel that are not included in this Stipulation and Order shall be of any force Or effect.

10. Plaintiff acknowledges and represents that, in executing the Stipulation and Order, he does not and has not relied upon any representations or statements, other than those contained in the Stipulation and Order, by Defendant or its agents, officers, representatives or attorneys with regard to the subject matter, basis or effect of this Stipulation and Order.

11. This Stipulation and Order shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

12. This Stipulation and Order may be entered by the Court without any further notice to the parties.

October 11, 2002

BY:~

YINA VALENTIN,  
Plaintiff

*EJA...--)*

October 11, 2002

By:

*[Signature]*  
ERNEST CODELIA (EC-6375)  
1967 Turnbull Avenue  
Bronx, New York 10473  
Tel. No.: (718) 931-2575  
Counsel for Plaintiff

S



JAMES 8. COMEY  
United States Attorney for the  
Southern District of New York  
Attorney for Defendant  
United States Department of  
Agriculture, Food , Nutrition  
Service

October 4, 2002

By:

\_\_\_\_\_  
RICHARD E. ROSBERGER (RR-1632)  
Assistant United States Attorney  
100 Church Street, 19th Floor  
New York, New York 10007  
Temp. Tel. No.; (718) 422-5614  
Temp. Fax. No.: (718) 422-1789

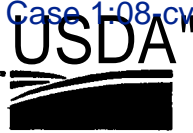
Dated: New York, New York  
October 4, 2002

SO ORDERED:

  
United States District Judge

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" ,



United States  
Department of ..  
Agriculture

MAY  
7 2003

Food and  
Nutrition  
Service

101 Park  
Center Drive

Alexandria, VA  
22304-2150

Ernest J. Codelia  
Attorney at Law  
1967 Turnbull Avenue  
Bronx, NY 10473

Re: Stop One Grocery  
1580 Watson Avenue  
Bronx, NY 10472  
Jose V. Urena, Owner

Dear Mr. Codelia:

This letter is to confirm a payment agreement with you, on behalf of your client, Jose V. Urena, owner of Stop One Grocery. You indicated that monthly payments of \$3,876 each would be made to the Food and Nutrition Service by the fifteenth day of each month to liquidate a \$23,124 civil money penalty assessed for violations in the Food Stamp Program. Enclosed for your reference is a repayment schedule that indicates the date when each payment is due. Please note that the final payment of \$3,879.09 is due on October 15, 2003. There is no penalty for early payoff.

Your client's monthly payments should be made by check or money order, payable to and sent to:

USDA-FNS-HQ"  
P.O. Box 953807  
St. Louis, MO 63195-3807

In order to finalize the agreement, please review and have your client sign both copies of the enclosed repayment agreement and send them back to us at our Alexandria, Virginia address above. We will then sign and return one copy to you for your files. Your client must remember to remit his payment each month, as we will not send you or him a coupon book or monthly statements. Also, in order for your client to remain authorized to accept and redeem food stamp benefits, Mr. Urena must post a collateral bond or revocable letter of credit in the amount of \$3,854 and send it to Angela Mackey of our office in New York, New York.

Y.      -

Ernest J. Codelia  
Attorney at Law  
Page 2

If you have any question about these payment procedures or arrangements, please call Jack Patton of my staff at 703-305-1458 ..

Thank you for your attention to this matter.

Sincerely,

*#~LI~*

Barbara D. Williams  
Chief  
Accounting Operations and  
Fiscal Services Branch

Enclosures·

**Stop One Grocery**

**Principal** \$23,124.00  
**Interest** 2.000%  
**Payment** \$3,876.00

<b><u>Due Date</u></b>	<b><u>Payment</u></b>	<b><u>Interest</u></b>	<b><u>Total Interest</u></b>	<b><u>Principal Balance</u></b>
				23,124.00
May 15, 2003	3,876.00	38.54	38.54	19,286.54
June 15, 2003 ~--	3,876.00	32.14	70.68	15,442.68
July 15, 2003 ----,..	3,876.00	25.74	96.42	11,592.42
August 15; 2003 --3,876.00		19.32	115.74	7,735.74
September 15, 2003 \$ -----'3,876.00		12.89	128.64	3,872.64
October 15, 2003 = ~79.09		6.45	135.09	0.00



**Ernest Codelia, P.C.**

*Attorneys-at-Law*

1967 Turnbull Avenue  
Bronx, New York 10473  
Tel: (718) 931-2575  
Fax: (718) 931-1121

October 28, 2003

USDA-Food and Nutrition Service  
3101 Park Center Drive  
Alexandria, VA 22302-1594

Attn.: Barbara D. Williams  
Chief  
Accounting Operations and  
Fiscal Services Branch

Re: Wilson Baez  
1086 Superette Corp.  
2095 Cruger Avenue, Apt. 2C  
Bronx, New York 10452

Gentlemen:

On the referenced matter, returned herein two original repayment agreements.

Please note that by separate correspondence we are submitting the November payment to the USDA-FNS-HQ, in the sum of \$350.00.

It is understood that you will be returning one executed copy for our files.

Very truly yours,

Ernest J. Codelia, Esq.

EJC/ng  
encs.

October 16, 2003

USDA-Food and Nutrition Service  
Accounting Division, Room 744  
3101 Park Center Drive  
Alexandria, VA 22302-1594

### REPAYMENT AGREEMENT

In order to settle the claim against **1086 Superette Corp.**, I~Wilson Baez, agree that payments of at least \$350 per month will be made to USDA-FNS. Payments will begin in **November 2003** and will be mailed in order to reach USDA-FNS no later than the **first day** of each month.

(Please sign at the X.)  
J. L. ~?!

Signature

10/28/03  
Date

Title

P. V. S.

Accepted by USDA-FNS:

P. S.  
Signature

Date

Title





OCT 7 11 11

United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

3101 Park  
Center Drive

Alexandria, VA  
22302- 1500

Ernest Codelia. PC  
1967 Turnbull Avenue  
Bronx, NY 10473

Re: Wilson Baez  
1086 Superette Corp.  
2095 Cruger Ave., Apt. 2C  
Bronx, NY 10452

Dear Mr. Codelia:

This letter is to confirm a payment agreement with you, on behalf of your client, Wilson Baez. You indicated that monthly payments of \$350 each would be made to the Food and Nutrition Service by the first day of each month to liquidate a \$66,000 civil money penalty assessed for the sale of 1086 Superette Corporation. Interest at two percent per year accrues on the unpaid balance, and there is no penalty for early payoff.

Your client's monthly payments should be made by check or money order, payable to and sent to:

USDA-FNS-HQ  
P.O. Box 953807  
St. Louis, MO 63195-3807

In order to finalize the agreement, please review and have Mr. Baez sign both copies of the enclosed repayment agreement and send them back to us at our Alexandria, Virginia address above. We will then sign and return one copy to you for your files. Mr. Baez must remember to remit his payment each month, as we will **not** send you or him a coupon book or monthly statements.

If you have any question about these payment procedures or arrangements, please call Jack Patton of my staff at 703-305-1458.

Thank you for your attention to this matter.

Sincerely,

*[Handwritten signature]*  
Barbara D. Williams  
Chief

Accounting Operations and  
Fiscal Services Branch

Enclosures



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

LA SIMPATIA SUPERMARKET CORP.,  
and MANUEL DIAZ,

Plaintiffs,

- against.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, FOOD AND CONSUMER  
SERVICE,

Defendant.

-----X

SUPPLEMENT AND ORDER  
OF SETTLEMENT AND  
DISMISSAL

ECF Case

07 Civ. 4813 (CM) (KNF)

WHEREAS plaintiffs La Simpatia Supermarket Corp. and Manuel Diaz ("Plaintiffs"), filed this action on or about June 6, 2007, challenging a decision of the United States Department of Agriculture, Food and Nutrition Service ("FNS" dated May 8, 2007, disqualifying Plaintiffs from the Food Stamp Program for a period of six months;

WHEREAS Plaintiffs and defendant United States Department of Agriculture ("Defendant") stipulated to stay the disqualification until August 10, 2007, and subsequently further stipulated to stay the disqualification until September 8, 2007; and

WHEREAS the parties to this action desire to stipulate, consent and agree to a complete and final settlement of all claims in this action, without the need for a hearing on the merits or for other Court intervention in this case, and to obtain an order from this Court encompassing the terms of said settlement;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and

between the parties hereto, and through their respective undersigned counsel, that:

1. The Complaint is dismissed with prejudice, without costs, expenses or attorneys' fees to either side, pursuant to Federal Rule of Civil Procedure 41(a), except that the Court retains jurisdiction to enforce the terms of this Stipulation and Order.

2. Plaintiffs agree to pay Defendant a civil monetary penalty of \$25,734.00 in connection with the resolution of this action. This penalty shall be due in six monthly installments, by certified check or money order made payable to the United States Department of the Treasury, and shall be delivered to the United States Attorney's Office, Southern District of New York, 86 Chambers Street, Third Floor, New York, New York 10007, Attn: AUSA Matthew L. Schwartz. The first installment of \$4,289.00 shall be due seven calendar days after this Stipulation and Order of Settlement and Dismissal ("Stipulation") has been signed by all parties and approved by the Court. The remaining installments shall be paid in the same manner as above in five equal monthly installments of \$4,289.00 each, with each installment due on the first day of every month, beginning on October 1, 2007, and extending through February 1, 2008.

3. Pursuant to 7 U.S.C. § 2021 and 7 a.F.R. § 278.1(b)(4), Plaintiffs agree to provide, within thirty (30) days of the execution of this Stipulation, a bond or irrevocable letter of credit in the amount of \$4,289.00 to the United States Department of Agriculture, New York City Field Office. Said bond or letter of credit shall be delivered to: Gilda Torres) Officer In Charge, Food and Nutrition Service,

United States Department of Agriculture, 201 Vanek Street, New York, New York 10014, and shall remain valid at all times during which either plaintiff is authorized to participate in the Food Stamp Program. Notwithstanding the previous sentence if plaintiff La Simpatia Supermarket Corp. is sold to a third party after Plaintiffs have paid the total penalty in the amount of \$25,734.00, as set forth in paragraph 2 above, Plaintiffs shall no longer be required to provide the bond or letter of credit described in this paragraph .

4. If Plaintiffs fail to make any payment required in paragraph 2 or fail to provide the bond or letter of credit described in paragraph 3 above when due, Plaintiffs shall be deemed in default of this Stipulation and agree (a) to an automatic six-month disqualification from the Food Stamp Program commencing the day after the payment required in paragraph 2 became due or the due date of said bond or letter of credit; (b) to waive their right to judicial review of such disqualification; and (c) to forfeit any portion of the total penalty in the amount of \$25,734.00 that Plaintiffs may have already paid.

5. Plaintiffs further agree to comply with all applicable laws and regulations of the Food Stamp Program; to fulfill their obligations as set forth in this Stipulation; and to be placed on probation for a two-year period commencing with the execution of this Stipulation. If a random inspection or analysis of Electronic Benefit Transfer (EBT) data during this period of probation reveals any violation of the Food Stamp Act of 1977, as amended, 7 U.S.C. §§ 2011-29, committed by any principal, employee or agent of plaintiff La Simpatia

Supermarket Corp., Plaintiffs agree (a.) to a determination by FNS of a violation, and the imposition of whatever penalty may be applicable to such violation under the Food Stamp Program; (b) to waive their right to judicial review of any such determination of violation and imposition of applicable penalty; and (c) to forfeit any portion of the total penalty in the amount of \$25,734.00 that Plaintiffs may have already paid" as well as the \$4,289.00 bond or letter of credit referenced in paragraph 3 above. No fewer than seven days before making any formal determination of violation under this paragraph, FNS shall provide notice to Plaintiffs, through their undersigned attorneys

6. In consideration of the full performance by Plaintiffs of all their obligations under this Stipulation, FNS hereby modifies its decision disqualifying Plaintiffs from the Food Stamp Program for a period of six months. Defendant agrees that, subject to the terms of this Stipulation, Plaintiffs shall continue to have the privilege of full participation in the Food Stamp Program upon the execution of this Stipulation.

7. The parties acknowledge, understand and agree that this Stipulation sets forth the entire agreement between them relating to the subject matter addressed by this Stipulation, and that no statements, representations, promises, agreements, or negotiations, oral or otherwise, between the parties or their counsel that are not included in this Stipulation shall be of any force or effect.

8. Plaintiffs acknowledge and represent that in executing this Stipulation, they are not relying, and have not relied, upon any representations or

statements other than those contained in this Stipulation, by Defendant or its agents, officers, representatives, or attorneys with regard to the subject matter, basis, or effect of this Stipulation.

9. ~~Except as provided herein, this Stipulation shall be binding upon and~~ inure to the benefit of the parties and their respective legal representatives, successors, and assigns.

10. This Stipulation may be so-ordered by the Court without any further notice to the parties.

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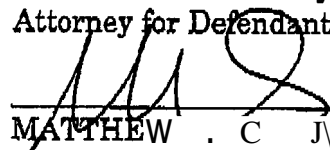
Dated: New York, New York  
August *1b*, 2007

~~ERNEST L. CODELIA;~~  
Codelia & Socorro, P.C.  
Attorneys for Plaintiffs  
1967 Turnbull Avenue, Suite 6  
Bronx, New York 10473  
Telephone: (718) 931-2575  
Facsimile: (718) 931-1121

**MICHAEL J. GARCIA**  
**United States Attorney**  
**Attorney for Defendant**

Dated: New York, New York  
August *gt~O*, 2007

By:

  
**MATTHEW . C JARTZ**  
Assistant United States Attorney  
86 Chambers Street, 31<sup>st</sup> Floor  
New York, New York 10007  
Telephone: (212) 637-1945  
Facsimile: (212) 637-2750

SO ORDERED .

Dated: New York, New York  
August *~*, 2007

HON. COLLEEN McMAHON  
United States District Judge





U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review  
Alexandria, VA 22302

Garlan Supermarket, Inc.,	)	
	)	
Appellant,	)	
	)	
v.	)	Case Number: COI09429
	)	
New York City, New York Field Office,	)	
	)	
Respondent.	)	
	)	

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture, Food and Nutrition Service (FNS), that there is sufficient evidence to support a finding that a two-year disqualification from participating as an authorized retailer in the Food Stamp Program was properly imposed against Garlan Supermarket~ Inc. (hereinafter "Garlan Supermarket") by the New York City, New York Field Office (hereinafter "Field Office").

ISSUE

The issue accepted for review is whether the Field Office took appropriate action, consistent with 7 CFR §278.6(e)(4) and 7 CFR §278.6(e)(6) in its administration of the Food Stamp Program (FSP) when it imposed a two-year period of disqualification against Garlan Supermarket on May 16, 2007.

AUTHORITY

7 D.S.C. 2023 and its implementing regulations at 7 CFR §279.1 provide that "[A] food retailer or wholesale food concern aggrieved by administrative action under §278.1, §278.6 or §278.7 ... may file a written request for review of the administrative action with FNS.

STATEMENT OF THE CASE

In a letter dated July 6, 2006, the Field Office informed Appellant that he was in violation of the terms and conditions of the FSP regulations, 7 CFR §§270-282, based on EBT Food Stamp benefit transactions considered to "establish clear and repetitive patterns of unusual, irregular, and inexplicable FSP activity for your type of firm."

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In subsequent correspondences, Appellant, himself and through counsel, denied trafficking and attributed questionable transactions to the firm having extended credit to Food Stamp customers for which they repaid with Food Stamp benefits.

After giving consideration to the evidence of the case, Appellant's reply and documentation in support of Appellant's contention that questionable transactions were the result of repayments on credit charges, the Field Office notified Appellant in a letter dated May 16, 2007 that a one-year period of disqualification from participation in the FSP was warranted in accordance with 7 CFR §278.6(e)(4) and 7 CFR §278.2(f) for credit violations. However, because the firm has once before been assigned a sanction, Appellant was further informed that his store was being disqualified for a period of two-years, double the one-year disqualification, in accordance with 7 CFR §278.6(e)(6) of the FSP regulations.

On May 24, 2007, Appellant, through counsel, appealed the Field Office's assessment and requested an administrative review of this action. The appeal was granted and implementation of the two-year disqualification has been held in abeyance pending completion of this review.

#### ANALYSIS AND FINDINGS

In administrative proceedings involving disputes of regulatory actions or inactions, USDA assumes the responsibility of establishing a sufficient factual record to prove or disprove the allegations of the appeal. The record is then reviewed in light of the evidentiary standards and analytical frameworks established by various courts of law.

In appeals of adverse actions, Appellant bears the burden of proving by a clear preponderance of the evidence, that the administrative actions should be reversed. That means Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

#### I

The controlling statute in this matter is contained in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2021 and 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(e)(4) establishes the authority upon which a one year disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in violations such as the sale of common nonfood items for Food Stamp benefits. Part 278.2(f) asserts that it is a violation for Food Stamp benefits to be used as repayment on credit charges. There also exist FNS policy memoranda and clarification letters, which further explain the conditions necessary in order to impose one year disqualifications against firms and, in particular, the applicability of a one year disqualification to violations involving repayment of credit. Part 278.6(e)(6) establishes the authority upon which a temporary period of disqualification is doubled because a firm has once before been assigned a sanction.

7 CFR §278.6(e)(4) reads, in part, "Disqualify the firm for one year if it is to be the first sanction for the firm and the ownership or management personnel of the firm have committed violations such as the sale of common nonfood items in amounts normally found in a shopping basket, and FNS had not previously advised the firm of the possibility that violations were occurring and of the possible consequences of violating the regulations."

7 CFR §278.2(f) reads, in part, Food Stamp benefits "may not be accepted by an authorized retail food store in payment for any eligible food sold to a household on credit."

7 CFR §278.6(e)(4) reads, in part, "Double the appropriate period of disqualification prescribed in paragraphs (e)(2) through (5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction."

## II

On review, charges were based on an analysis of EBT Food Stamp benefit transaction data during the three-month period December 2005 through February 2006 and involved four patterns of EBT transaction characteristics indicative of trafficking:

- 1) Multiple transactions of individual household accounts within an unusually short timeframe;
- 2) Transactions that depleted all or a majority of a household's monthly benefit allotment within unusually short timeframes;
- 3) Excessive number of manual key-entered transactions significantly exceeding the normal practice for stores in the State; and,
- 4) Excessively large transactions.

Based on an analysis of the evidence in this case, it appears that program violations did, in fact, occur. A review of the evidence has yielded no indication of error in the finding by the Field Office that questionable transactions could not be explained as solely legitimate sales of eligible food items. However, while Appellant was initially charged with trafficking in FSP benefits, the Field Office found that Appellant's primary contention has validity that questionable transactions were the result not of trafficking violations but rather of Food Stamp households having been allowed to use their program benefits to pay for previous purchases for which store credit had been extended, also a FSP violation. As a result, the Field Office reduced its proposed sanction against the firm from a permanent disqualification for trafficking, pursuant to 7 CFR §278.6(e)(1), to a one-year period of disqualification for credit violations, pursuant to 7 CFR §278.6(e)(4) and 7 CFR §278.2(f) and then doubled the sanction to a two-year period of disqualification in accordance with 7 CFR §278.6(e)(6).

Appellant, through counsel, contends as his position in the matter essentially the following:

- The store has been operating under the same ownership and with a FSP license for over 26 years. After 20 years with a clean record, the firm received a six-month disqualification for violations involving the sale, not of drugs, alcohol or cigarettes, but of ordinary household items on three occasions;
- The doubling of the penalty due to prior violations that resulted in a six-month disqualification is not mandatory and should not be applied as the prior sanction was for six months and occurred six years ago;
- The violation for extending credit to store clientele was in good faith and in helping the poor in the neighborhood where credit is part of the culture;
- The store is located in a low income area and serves a predominantly Hispanic clientele, most of whom are Food Stamp recipients. The nearest store that serves the same clientele is in excess of two full city blocks away; and,
- Disqualification will not only hurt the community but will also put Appellant's store out of business.

The preceding may represent only a brief summary of Appellant's contentions in this matter. However, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

### III

With regards to Appellant's contention that doubling of the penalty is not mandatory and should not be applied because the prior sanction was only for a six-month period and occurred six years ago, the FSP regulations at 7 CFR §278.6(e)(6) does not provide for discretion in its application or consideration of how much time has passed since a prior sanction. 7 CFR §278.6(e)(6) states: "Double the appropriate period of disqualification prescribed in paragraphs (e)(2) through (5) of this section as warranted by the evidence of violations if the same firm has once before been assigned a sanction." Appellant firm is the same firm that has once before been assigned a sanction, and the present disqualification prescribed in paragraph (e)(4), a one-year disqualification, is warranted by credit violations as evidenced by Appellant's admission to the same. Therefore, the Field Office's determination to disqualify Garlan Supermarket for a two-year period is not only consistent with the FSP regulations but is also in strict accordance therewith.

Regarding Appellant's contention that his store had been in business for 20 years before it received its first sanction, implying that the firm had a clean record for so many years and had not been previously cited for any violations, such a past record of participation in the FSP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. In fact, such a contention has no bearing at all in this review as the review focus is on the second sanction imposed against the store and there is no longer exists a clean record to consider.

Regarding Appellant's contention that disqualification will hurt the community as Garlan Supermarket is located in a low income area and the nearest store that serves the same clientele is located two full city blocks away, consideration was given to whether it might

be appropriate to assess a civil money penalty in this case in lieu of the two-year period of disqualification. Such a finding is appropriate only if a store sells a substantial variety of staple food items and its disqualification would create a hardship to Food Stamp households because there is no other authorized retail food store in the area selling as large a variety of staple food items at comparable prices. It is recognized that some degree of inconvenience to Food Stamp users is inherent in the disqualification from the FSP of any participating food store as the normal shopping pattern of FSP households may be temporarily altered during the period of disqualification.

In this case, the Field Office has rendered a finding pursuant to 7 CFR §278.6(f) that it would not be appropriate to impose a civil money penalty in lieu of a period of disqualification because of its determination that Garlan Supermarket is not the only authorized retail food store in the area "selling as large a variety of staple food items at comparable prices." The Field Office noted that there are other retail food stores in the area of consideration, (which in a urban area is within a one-mile radius of the subject store,) including a supermarket only 0.03 miles away, that qualify as alternates to Garlan Supermarket, pursuant to 7 CFR 278.6(f). Therefore, the earlier determination that the disqualification of Garlan Supermarket would not create a hardship to customers, as differentiated from potential inconvenience, is sustained, and a civil money penalty in lieu of disqualification is not appropriate in this case.

With regards to Appellant's contention that disqualification will put Appellant's store out of business, it is recognized that some degree of economic hardship is a likely consequence whenever a store is temporarily disqualified from participation in the FSP. However, consideration must be given to the interests of the program and fairness and equity, not only to competing stores but also to those other participating retailers who are complying fully with program regulations. In addition, fairness must be afforded to those other retailers who have been disqualified from the program in the past for similar violations.

### **CONCLUSION**

In accordance with 7 CFR §278.2(f) and §278.6(e)(4) of the FSP regulations and agency directives, accepting Food Stamp benefits in payment for credit charges is a program violation that is as serious as the sale of ineligible nonfood items and warrants a one-year period of disqualification. Therefore, it is the decision of the USDA that the imposition of a one-year disqualification from participation in the FSP against Garlan Supermarket for credit violations, as originally imposed, is warranted. In addition, it is the further decision of the USDA that because the same firm has once before been assigned a sanction, pursuant to 7 CFR §278.6(e)(6), doubling the one-year disqualification to a two-year period of disqualification is sustained.

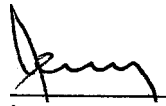
In accordance with the Food Stamp Act of 1977, and the regulations thereunder, this period of disqualification shall become effective thirty (30) days after receipt of this letter. A new application for participation may be submitted by the firm ten (10) days prior to the expiration of this one-year period. In accordance with 7 CFR §278.1(b)(4), at the time of any sm-hnew application for program participation, the firm would be advised

by the office receiving such an application of the necessity, as a store previously sanctioned for program violations, also to post a collateral bond or irrevocable letter of credit as a condition for again being authorized to participate in the program.

### **RIGHTS AND REMEDIES**

Your attention is called to Section 14 of the Food Stamp Act (7 U.S.C. 2023) and to Section 279.7 of the Regulations (7 CFR §279.7) with respect to your right to a judicial review of this determination. Please note that if a judicial review is desired, the Complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which you reside or are engaged in business, or in any court of record of the State having competent jurisdiction. If any Complaint is filed, it must be filed within thirty (30) days of receipt of this Decision.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personal information that if released, could constitute an unwarranted invasion of privacy.

  
 J. Y. A. SEINFELD  
 ADMINISTRATIVE REVIEW OFFICER

**MAY 29 2008**

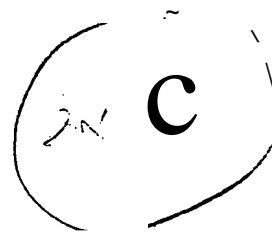
DATE







*please file*



~:ERTIFIED MAIL - Return Receipt Requested

**United States  
Department of  
Agriculture**

Food and Consumer  
Service

Northeast Region

10 Causeway Street, Room 501  
Boston, MA 02222



Felix Martinez, President  
1278 Felix Grocery, Inc.  
1278 Grand Concourse  
Bronx, NY 10456

*8/19/96*

Dear Mr. Martinez:

Careful consideration has been given to the information and evidence available to us relating to our letter of charges dated March 5, 1996, and to your reply of March 15, 1996, to that letter. ("-----

We find that the violations, as outlined in our above-cited charge letter, occurred at your store. These violations consisted of sales by the manager. Five transactions occurred involving obviously ineligible items.

YCIU are hereby notified that it is my determination that 1278 Felix Grocery, Inc., under the presidency of Felix Martinez shall be disqualified from participation in the Food Stamp Program for a period of one year. This is in accordance with Section 278.6(e) (4) of the Food Stamp Program Regulations.

This determination will become effective on the 10th calendar day following your receipt of this notice. If the 10th calendar day is a Saturday, Sunday or legal (Federal) holiday, the disqualification will be effective the next day which is not a Saturday, Sunday or legal (Federal) holiday. This action is taken under the authority of Section 278.6(a) of the regulations governing the Food Stamp Program.

You may apply for reinstatement beginning 10 days prior to the expiration of the disqualification period. If your application is approved, you will be issued a new authorization number and card upon completion of your disqualification period.

Your authorization card, number 2946637, all unused redemption certificates, and all posters, forms, and other official materials relating to the program must be mailed by the above stated effective date to Angela Mackey, OIC, Food and Consumer Service, USDA, 201 Varick Street, Room 609, New York, NY 10014. Tel: (212) 620-3691.

*3/11*

1278 Felix Grocery, Inc.

2

Financial Institutions will be notified not to accept food coupons from your firm after the third banking day following the effective date. Any coupons on hand at the close of business on the effective date must be redeemed within 3 banking days after the effective date.

This determination will be final unless you submit written request for review to the Director, Administrative Review Staff, USDA, FeS, 3101 Park e-erite Drive, Room 1002, Alexandria, Virginia 22302. Your request for review should be sent by e-mail and must be postmarked by midnight of the 10th calendar day after you receive this notice, in order to be considered timely. If the 10th day of the period for requesting review falls on a Saturday, Sunday or legal (Federal) holiday, as specified in Section 279.5 of the regulations, a request for review will be timely if it is postmarked the next day which is not a Saturday, Sunday or legal (Federal) holiday.

If a timely request for review is made, you may continue to accept and redeem food coupons until a decision on your request has been made by the Review Officer. The rules governing your review rights are contained in Section 278.8 and Part 279 of the Food Stamp Program Regulations.

This determination shall not preclude the Department of Agriculture or any other agency or department of the United States from taking further action to collect any claim determined under the regulations governing the Food Stamp Program or under any other pertinent statutes or regulations, nor shall this determination preclude prosecution under any applicable penal statutes.

In accordance with Section 278.6(f) (2)(3)(4) of the Food Stamp Regulations, in the event that you sell or transfer ownership of your firm, you will be subject to and liable for a civil money penalty in an amount to reflect that portion of your disqualification period that has not expired.

If you apply for re-authorization at the end of the disqualification period, you will be required to submit a collateral bond or irrevocable letter of credit, and meet all other criteria for authorization in order to again participate in the Food Stamp Program.

1278 Felix Grocery, Inc.

3

Si usted tiene dificultad entendiendo esta carta debido a falta de conocimiento del ingles, favor de ponerse en contacto con esta oficina inmediatamente. Nosotros le explicaremos y/o traduciremos el contenido.

Nombre y direccion de la oficina:

Angela Mackey, OIC  
Food & Consumer Service, USDA  
201 Varick Street, Room 609  
New York, NY 10014  
TEL: (212) 620-3691

Sincerely,



~~n~~

Retailer Operations  
Food Stamp Program



United States  
Department of  
Agriculture

Food and  
Con-  
Servic

Northeast Region

10 Causeway 51.  
Room 501  
Boston, MA 02222

**CERTIFIED MAIL - Return Receipt Requested**

Pedro Santana, Owner  
74 Nagle Grocery  
74 Nagle Avenue  
New York, NY 10040

APR 10 1998

Dear M.L. Santana:

Careful consideration has been given to the information and evidence available to us relating to our letter of charges dated October 30, 1997.

We find that the violations, as outlined in our above-cited charge letter, occurred at your store. These violations consisted of sales by two clerk ~ Five transaction ~ occurring involving obviously ineligible items.

You are hereby notified that it is my determination that 74 Nagle Grocery, under the ownership of Pedro Santana, shall be disqualified from participation in the Food Stamp program for a period of six months. This is in accordance with section 278.6(e) (5) of the Food Stamp Program Regulations.

This determination will become effective on the 10th calendar day following your receipt of this notice if the 10th calendar day is a Saturday, Sunday or legal (Federal) holiday, the disqualification will be effective the next day which is not a Saturday, Sunday or legal (Federal) holiday. This action is taken under the authority of Section 278.15(a) of the regulations governing the Food Stamp Program.

You may apply for reinstatement beginning 10 days prior to the expiration of the disqualification period. If your application is approved, you will be issued a new authorization number and card upon completion of your disqualification period.

Your authorization card, number 6648142, all unused redemption certificates, and all posters, forms, and other official materials relating to the program must be mailed to Angela Mackey, OFC, Food and Consumer Service, USDA, 01. Varick Street, Room 609, New York, NY 10014. Tel: (212) 620-3691.

74 Nagle Grocery

2

Financial Institutions will be notified not to accept food coupon~ from your firm after the third banking day following the effect~ve date. Any coupons on hand at the close of business on the effecti v.e date must be redeemed within 3 banking days after the effecti vi!!! date.

This determination will be final unless you submit a timel'l written requ~st for review to the Direc.tor, .Admin~stratlve Review Staff, OSDA,FCS, 3101 Park Center Drive~Room 1002 POC, Alexandria, Virginia 22302. Your reques~ for review aholi.d b~ sent by certified .mail andmuat: he poatmU"ked by midnight.~ of the 10th ccUenda~:,day after you :eeei"e thi.\$ notice, in orcier ~o be considered t:~Uaely. If the 10th day of the period for reqUesting r~view falls 'Ona Saturday, Sunday or le9:al (Federal) holiday, as specified in Section 279.5 of the regulations, a request for review will be timely if it is postmarked the n~xt. day whi"c:his not a Saturdcly, S~day or legal (Federal) holiday.

If a .timely l~equest for review is made, .you may continue to accept and rE!deem food coupons until a decision on your reqUest has been madE~by the Review Officer. The rules governing your review right~' are contained in Section 278.8 and Part 279.of th~ Food Stamp PJ:ogram Aegulations.

This determination shall not preclude the Oepa;rtmentof Agriculture <!! any other agency Of department Of the United States from t:akingfurther action to collect any claim determined Under the regrulations governing the Food Stamp Program or~under any other pex:inent statutes or regulations, .nor shall this~ .determination.Lprecl~de prosecution under any applicable penal statutes.

In a~cordance! with Section 27S.6{f} (2) (3) (4) 'Of the Food "Stamp Regulations, in the event that you sell or transfer ownership of your firm, yciu will be subject to and liable fora civil money penalty in an amount to reflect that portion of your disqualificati,on peri'Od that has not expired.

If you apply for reauthori2ation at the end of the disqualificat.ion period, you will be required t'Osubmit a co~lateral bond or i~revocable letter of credit, and meet all .other .criteria for authori...z:ation.in order to 49ain part;'cipat4f'in the Food Stan~ Program.

74 Nagle Grocery

3

Si usted tiene dificultad entendiendo esta carta debido a falta de conocimiento del inglés, favor de ponerse en contacto con esta oficina inmediatamente. Nosotros le explicaremos y/o traduciremos el contenido.

. Nombre y dirección de la oficina:

Angela Mackey Ore  
Food & Consumer Service" USDA  
201 Varick Street, Room 609  
New York, NY 10014  
TEL: (212) 620-3691

Sincerely,

Thomas W. Alldresen, Manager  
Retail Operations  
Food Stamp Information

FAX 212 620-6948





USDA  
-ii-

United States  
Department of  
Agriculture

**CERTIFIED MAIL - Return Receipt Requested**

Food and  
Nutrition  
Service

Northwest Region

10 Columbia St.  
Room 501  
Boston, MA 02222

Rafael Martinez, President  
Watson Food Center, Inc.  
1702 Watson Avenue  
Bronx, NY 10472

**JAN 11 2008**

Dear Mr. Martinez:

Careful consideration has been given to the information and evidence available to us relating to our letter of charges dated September 4, 1999, and to your reply of October 12, 1999, to that letter.

We find that the violations, as outlined in our above-cited charge letter, occurred at your store. These violations consisted of sales by the manager and three clerks. Seven transactions occurred involving obviously ineligible items.

You are hereby notified that it is my determination that Watson Food Center, Inc., under the presidency of Rafael Martinez shall be disqualified from participation in the Food Stamp Program for a period of one year. This is in accordance with Section 278.6(e)(4) of the Food Stamp Program Regulations.

This determination will become effective on the 10th calendar day following your receipt of this notice. If the 10th calendar day is a Saturday, Sunday or legal (Federal) holiday, the disqualification will be effective the next day which is not a Saturday, Sunday or legal (Federal) holiday. This action is taken under the authority of Section 278.6(a) of the regulations governing the Food Stamp Program.

You may apply for reinstatement beginning 10 days prior to the expiration of the disqualification period. If your application is approved, you will be issued a new authorization number and card upon completion of your disqualification period.

Your authorization card, number 3476057; all unused redemption certificates, and all posters, fliers, and other official materials relating to the Program must be mailed to Angela Mackey, OIC, Food and Nutrition Service, SDA, 201 Varick Street, Room 609, New York, NY 10014. Tel: (212) 620.3691.

Financial Institutions will be notified not to accept food benefits from your firm after the third banking day following the effective date. Any coupons on hand at the close of business on the effective date must be redeemed within 3 banking days after the effective date.

AMERICAN OPPORTUNITY EMPLOYMENT

Watson Food Center, Inc.

Also, if you are an authorized vendor under the Special Supplemental Food Program for Women, Infants, and Children (WIC), you may be withdrawn from the WIC Program as a result of your disqualification from the Food Stamp Program.

This determination will be final unless you submit a timely written request for review to the Director, Administrative Review Staff, USDA, FCS, 3101 Park Center Drive, Room 1002 P.O. Box 1002, Alexandria, Virginia 22302. Your request for review should be sent by certified mail and must be postmarked by midnight of the 10th calendar day after you receive this notice. It will be considered timely if the 10th day of the period for requesting review falls on a Saturday, Sunday or legal (Federal) holiday as specified in Section 279.5 of the regulations, a request for review will be timely if it is postmarked on the next day which is not a Saturday, Sunday or legal (federal) holiday.

If a timely request for review is made, you may continue to accept and redeem food benefits until a decision on your request has been made by the Review Officer. The rules governing your review rights are contained in Section 278.8 and Part 279 of the Food Stamp Program Regulations.

This determination shall not preclude the Department of Agriculture or any other agency or department of the United States from taking further action to collect any claim determined under the regulations governing the Food Stamp Program or under any other pertinent statutes or regulations, nor shall this determination preclude prosecution under any applicable penal statutes.

In accordance with Section 278.6(t)(2)(3)(4) of the Food Stamp Regulations, in the event that you sell or transfer ownership of your firm, you will be subject to and liable for a civil money penalty in an amount to offset that portion of your disqualification period that has not expired.

If you apply for reauthorization at the end of the disqualification period, you will be required to submit a collateral bond or irrevocable letter of credit, and meet all other criteria for authorization in order to again participate in the Food Stamp Program.

Watson Food Center, Inc.

Si USICdlicne difilcultad emendiendo esta carta debido a faltade conocimientodcl ingles, favor de poncrsc en contacto con esta ()ticina inmediatamente. Nosotroslc explicaremos y/o tratJucircmos elcontenldo ..

Nombre y direccion de la oficina:

Angela Mackey, OIC  
Food & Nutrition Service, USDA  
201 Varick Street, Room 609  
New York, NY 10014  
TEL: (212) 620-3691

Sincerely,

~.1      \\\O.,~  
ThomasW. :ten,      Manager  
Retailer Operations  
Food S~1mp Proglram



USDA

(f3)

United States  
Department of  
Agriculture

CERTIFIED MAIL RETURN RECEIPT REQUESTED

~~~~~  
October 5, 1998

Service

3101 Park  
Center Drive

Alexandria, VA  
22302-1500

Teudo Gonzalez, owner  
GONZALEZ DELI-MEAT GROCERY  
931 Fox Street  
Bronx, NY 10459

Dear Owner:

This is in further response to your request for an administrative review of a 6 month disqualification from participating in the Food Stamp Program at your store.

I have considered the information submitted in support of your contention that the store should not be sanctioned, as proposed by the Regional office of the Food and Consumer Service (FCS).

The sanction determined by the Regional office resulted from an investigation which documented 3 unauthorized Food Stamp transactions of January 6, 11 and 20, 2000, involving the sale of 9 ineligible items, at the store.

With a transmittal/charge letter of April 18, 2000 to the firm, the Regional office forwarded a copy of the investigation report, which describes each visit to the store, the items purchased and the conversation relevant to the sale.

Your letter of April 27, 2000 responded to that letter, saying if violations did occur, as charged, they were not done intentionally. You also indicated how important the Food Stamp Program is to your store's financial well being

The Regional office then notified your store in a letter of July 12, 2000 it would be disqualified for 6 months as a consequence of the sale of common ineligible items, on 3 occasions.

With the receipt of a July 12, 2000 letter requesting administrative review of this sanction, you were notified the store could continue participation in the program pending administrative review, and that written information in support of your position must be postmarked not later than August 23, 2000.

I have reviewed all the information in the official participation file provided by the Regional office of FCS which includes The U. S. Department of Agriculture investigation report. I have also considered all information submitted during administrative review.



Based on my study of the investigative documentation, I find that the program violations with which this firm is charged are supported by substantial credible evidence. These charges resulted from the clearly documented transactions in the store, reported in a formal USDA investigation. All transactions were carefully documented at the time of occurrence. My study shows this investigative documentation to be clearly presented with regard to all significant aspects of the food stamp transactions in the store. I, thus, conclude that the administrative charges are an accurate presentation of the facts.

As requested, I have considered the eligibility of this firm for a hardship civil money penalty in lieu of disqualification. That alternate sanction is appropriate only when disqualification would create a hardship to food stamp customers because there are no other authorized retail stores in the area selling as large a variety of staple food items with comparable prices. It is my decision that it would not be appropriate to substitute a hardship civil money penalty as the record shows there are two authorized stores offering staple food items of comparable variety and price, within .3 mile of your firm.

It is my determination that a 6 month disqualification of GONZALEZ DELI-MEAT GROCERY is in accordance with Section 278.6(e)(5) of food stamp regulations. I am, thus, sustaining the decision of the Regional Office to impose that sanction, which shall become effective 30 days after your receipt of my letter.

The option to request, Judicial review of this decision is outlined in Section 279.10 of Pro~Jram Regulations. Such complaint, naming the United States as the defendant, is to be filed in the United States District Court for the district in which the appellant resides or is engaged in business, or in any court of record of the State having competent jurisdiction. It must be filed within 30 days of your receipt of this letter.

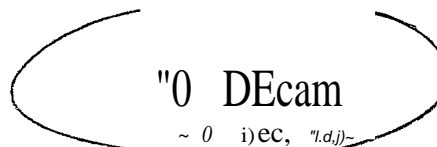
Sincerely,

 c; 

PATRICK A. FHANK  
Administrative Review Officer







United States  
Department  
of Agriculture

Food and  
Nutrition  
Service

New York City Field  
Office

201 Varick St  
RM 609  
New York City, NY  
10014

(212) 620-3691

Victorino Mendez  
Mendez's Grocery  
655 Courtlandt Avenue  
Bronx, NY 10451

Dear Mr. Mendez:

Consideration has been given to the information and evidence available to us relating to our letter of charges dated 11/21/2003, to which you did not reply. We find that the violations cited in our charge letter occurred at your firm.

We considered your eligibility for a civil money penalty (CMP) according to the terms of section 278.6(i) of the FSP regulations. We have determined that you are not eligible for the CMP because you did not submit the required documentation.

Therefore your firm shall be permanently disqualified from the Food Stamp Program. This is in accordance with section 278.6(c) and 278.6(e)(1) of the FSP regulations.

This determination will be final unless you submit a written request for review to the Director, Administrative Review Staff, USDA, FNS, 3101 Park Center Drive, Room 608, Alexandria, Virginia 22302. Your request for review must be postmarked by midnight of the 10th calendar day after you receive this letter, in order to be considered timely. If the 10th day of the period for requesting review falls on a Saturday, Sunday or legal (Federal) holiday, a request for review will be timely "if it is postmarked the next day which is not a Saturday, Sunday or legal (Federal) holiday. The rules governing your review rights are contained in section 278.8 and part 279 of the FSP regulations.

During this review process, you may not accept food stamp benefits until a decision is rendered. If the permanent disqualification of your firm is later reversed through administrative or judicial review, USDA shall not be liable for the value of any sales lost during the period of disqualification you served (FSP regulations section 278.6(c)).

This determination shall not preclude the Department of Agriculture or any other agency or department of the United States from taking further action to collect any claim determined under the FSP regulations or under any other pertinent statutes or regulations, nor shall this determination preclude prosecution under any applicable penal statutes.

Your authorization card, number 0982946, and all program materials must be returned to this office. Your Electronic Benefit Transfer (EBT) processor will be advised to disable your EBT connection. Your EBT machine should be returned to your EBT vendor. If you accept food stamp benefits after the effective date of disqualification, you will be subject to a severe monetary fine, per section 278.6(m) of the FSP regulations, and possible prosecution under applicable penal statutes.

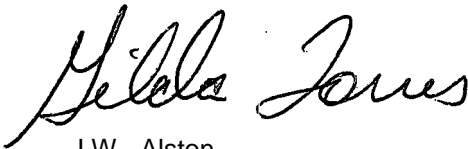
If you are an authorized vendor under the Special Supplemental Nutrition Program

for Women, Infants, and Children (WIC), you may be disqualified from the WIC Program as a result of your disqualification from the FSP. In accordance with current law governing both the FSP and the WIC Program, such a WIC Program disqualification is not subject to administrative or judicial review under the WIC Program.

In the event that you sell or transfer ownership of your store subsequent to your disqualification, you will be subject to and liable for a CMP as provided by FSP regulations sections 278.6(f)(2),(3) and (4). The amount of this sale or transfer CMP will be calculated based on FSP regulations 278.6(g).

Si usted tiene dificultad entendiendo esta carta debido a falta de conocimiento del idioma ingles, llame a nuestra oficina al numero: (212) 620-3691 inmediatamente. Nosotros le explicaremos o traduciremos el contenido.

Sincerely,



J.W. Alston  
Officer-In-Charge  
Metro II  
New York Federal Nutrition Program

for

Enclosures



United States  
Department of  
Agriculture

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Food and  
Nutrition  
Service

March 13, 2001

3101 Park  
Center Drive

Dilcia Crispin  
CASTLE HILL BUSINESS SERVICES

Alexandria VA  
22302.1500

1208 Castle Hill Avenue  
Bronx, NY 10462

RE: Ms. Alejandrina Munoz, President  
S8M SUPER.MARKET CORP  
3856 Broadway  
New York, NY 10032

Dear Sir:

This is in further response to your request for an administrative review of a 6 month disqualification from participating in the Food Stamp Program at your client's store.

I have considered the information submitted in support of your contention that the store should not be sanctioned, as proposed by the Regional office of the Food and Consumer Service (FCS). This includes the June 12 response to a charge letter of June 6, 2000.

The sanction determined by the Regional office resulted from an investigation which documented 4 unauthorized Food Stamp Electronic Benefit Transactions (EBT) of March 14, 20, 27 and April 3, 2000, involving the sale of 11 common ineligible items, and a \$12.99 cooking pot, vJ.ithlid, at tl1e store.

~  
-./With a transniittal/charge letter of June 6, 2000 to the firm, the Regional office forwarded a copy of the investigation report, which describes each visit to the store, the items purchased and the conversation relevant to the sale.

Your letter of June 12,2000 indicated that the employee who committed the violations is no longer employed at SBM SUPERMARKET, and indicated apolo~~iesfor the problems created by that employee.

After consideration of this response, the R.egional office notified your client's store in a letter of November 9, 2000 it would be disqualified for 6

months as a consequence of the sale of ineligible items, on 4 occasions.

With the receipt of a November 18, 2000 letter requesting administrative review of this sanction, you were notified the store could continue participation in the program pending administrative review, and that written information in support of your position must be postmarked not later than December 20, 2000 to be assured of consideration.

Your letter, requesting review reminded us the employee was terminated and asked for consideration of a hardship civil money penalty in lieu of disqualification.

I have reviewed all the information in the official participation file provided by the Regional office of FCS which includes The U. S. Department of Agriculture investigation report. I have also considered all information submitted during administrative review

Based on my study of the investigative documentation, I find that the program violations with which this firm is charged are supported by substantial credible evidence. These charges resulted from the clearly documented transactions in the store, reported in a formal USDA investigation. All transactions were carefully documented at the time of occurrence. My study shows this investigative documentation to be clearly presented with regard to all significant aspects of the food stamp transactions in the store. I, thus, conclude that the administrative charges are an accurate presentation of the facts.

At your request, I have considered the eligibility of this firm for a hardship civil money penalty in lieu of disqualification. That alternate sanction is appropriate only when disqualification would **create a hardship to food stamp customers** because there are no other authorized retail stores in the area selling as large a variety of staple food items with comparable prices. It is my decision that **it would not be appropriate to substitute a hardship civil money** penalty. A computer search of grocery stores close to your client's firm indicates there are 20 grocery stores within .2 mile, including 4 stores at 3835, 3845, 3846 and 3871 Broadway. Additionally there is a C Town at 1016 St. Nicholas, which is shown to be .2 mile from the subject.

It is my determination that a 6 month disqualification of S8M SUPERMARKET is in accordance with Section 278.6(e)(5) of Food Stamp

Program regulations. I am, thus, sustaining the decision of the Regional Office to impose that sanction, which shall become effective 30 days after your receipt of my letter.

The option to request Judicial review of this decision is outlined in Section 279.10 of Program Regulations. Such complaint, naming the United States as the defendant, is to be filed in the United States District Court for the district in which the appellant resides or is engaged in business, or in any court of record of the State having competent jurisdiction. It must be filed within 30 days of your receipt of this letter.

Sincerely,

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c: 

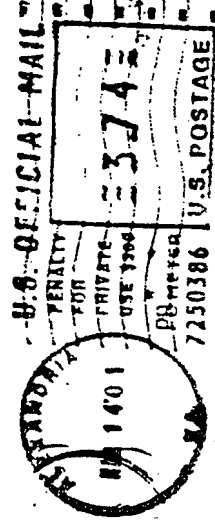
PATRICK A. FRANK  
Administrative Review Officer



ADMINISTRATIVE REVIEW DIVISION  
 FOOD & NUTRITION SERVICE, USDA  
 31 PARK CENTER DRIVE, ROOM  
 ALEXANDRIA, VIRGINIA 22302



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United States  
Department of  
Agriculture

Food and  
Nutrition  
Service

Northeast Region

10 Causeway St.  
Room 501  
Boston, MA 02222

CERTIFIED MAIL - RETURN- RECEIPT REQUESTED

JAM 1 4 200z

Anyolina Valentin, Owner  
Anyolina Grocery & Meat Market  
152 Nagle Avenue  
New York, NY 10040

Dear Retailer:

Your firm has been investigated by U.S. Department of Agriculture Investigators. A copy of the report is enclosed. The name of the person or persons who conducted the investigation has been removed. From this investigation there is evidence that certain violations of the regulations governing the Food Stamp Program 7 CFR 271-279 (hereinafter referred to as the regulations) have occurred in your firm.

Based on the transactions which occurred during this investigation, you are charged with food stamp benefits.

The misuse of food stamp benefits described in Exhibits A thru G was in violation of Section 278.2(a) of the regulations. Additionally, Italia Pichar, manager's wife, was identified as having participated in the violations described in Exhibits A & B.

Because of the seriousness of these charges, your store is being considered for disqualification from the Food Stamp Program or the imposition of a civil money penalty in lieu of disqualification. Therefore, we encourage you to give us the benefit of any information, explanation, or evidence you have regarding these charges. To ensure consideration of your response, you should reply within 10 days of the date you receive this letter. You may respond either in writing or in person. If you wish to reply in writing, please send your reply to Angela Mackey, OIC, Food and Nutrition Service, USDA, 201 Varick Street, Room 609, New York, NY 10014. If you wish to reply in person, please telephone the OIC at (212) 620-3691 for an appointment.

We will fully consider your reply and any information you provide before we make a decision in this matter. However, if we do not hear from you within the time indicated, we will make a decision based on the information already available to us.





USDA  
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United States  
 Department of  
 Agriculture

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Food and  
 Nutrition  
 Service

Jose V. Urena, Owner  
 Stop One Grocery

Northeast Region

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~B.:) 10 20CJ

10 Causeway St.  
 Room 501  
 Boston, MA 02222

Dear Mr. Urena:

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Careful consideration has been given to the information and evidence available to us relating to our letter of charges dated December 10, 2002, and to your attorney's reply of December 19, 2002, to that letter.

We find that the violations, as outlined in our above-cited charge letter occurred at your store. These violations consisted of sales by 2 Clerks. Three transactions occurred involving obviously ineligible items.

We have determined that assessment of a civil money penalty of \$23,124 in lieu of a six-month period of disqualification from participation in the Food Stamp Program is an appropriate penalty for these violations. This is in accordance with Section 278.6(f) of the Food Stamp Program Regulations ...

We have elected to assess a civil money penalty in lieu of disqualification because your firm is selling a substantial variety of staple food items, and the firm's disqualification would cause hardship to food stamp households in the residential building above the store.

You are hereby notified that Stop One Grocery under the ownership of Jose V. Urena shall have 15 days from receipt of this letter in which to pay \$23,124 in a lump sum to the address listed below. If you are unable to pay the civil money penalty in one lump sum, contact John Patton at 703-305-1458 ...

Please make your check or money order payable to USDA-FNS-HQ, and mail it to:

USDA-FNS-HQ  
 P.O. Box 953807  
 St. Louis, MO 63195-3807

A firm which has been assessed a civil money penalty must also submit a collateral bond or irrevocable letter of credit for its continued, ...

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participation. You must present a bond or letter of credit in the amount of \$3,854 to the OIC named below no later than 15 days from your receipt of this letter. The collateral bond shall be made payable to the Food and Nutrition Service and shall meet all requirements listed in the enclosure.

YOU MUST COMPLY WITH BOTH THE CIVIL MONEY PENALTY AND THE BONDING REQUIREMENTS AS A CONDITION OF REMAINING IN THE FOOD STAMP PROGRAM.

If you are an authorized vendor under the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), you may be disqualified from the WIC Program as a result of your payment of the civil money penalty. In accordance with current laws governing both the Food Stamp Program (FSP) and the WIC Program, such a WIC Program disqualification is not subject to administrative or judicial review under the WIC Program.

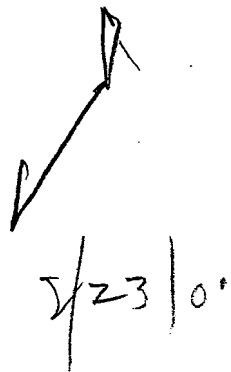
Failure to pay the civil money penalty or to comply with the bond/letter or credit requirement will result in the disqualification of your firm from participation in the Food Stamp Program for a period of six months effective the close of business of the 15th day following your receipt of this letter. If your firm is disqualified, you may not accept food benefits after the close of business of the 15th day following your receipt of this letter.

Your authorization card; number 3746011, all unused redemption certificates, and all posters, forms, and other official materials relating to the program must be mailed to Angela Mackey, OIC, Food and Nutrition Service, USDA, 201 Varick Street, Room 609, New York, NY 10014. Tel: (212) 620-3691.

Financial Institutions will be notified not to accept food stamp benefits from your firm after the third banking day following the effective date. Any coupons on hand at the close of business on the effective date must be redeemed within 3 banking days after the effective date.

YOUR ELECTRONIC BENEFIT TRANSFER (EBT) MACHINE MUST BE RETURNED TO THE VENDOR.

This determination will be final unless you submit a timely request for review to the Director, Administrative Review Staff, USDA, FNS, 3101 Park Center Drive, Room 608, Alexandria, Virginia 22302. Your request for review should be sent by certified mail and must be postmarked by midnight of the 10th calendar day after you receive

 8/23/08

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this notice, in order to be considered timely. If the 10th day of the period for requesting review falls on a Saturday, Sunday or legal (Federal) holiday, as specified in Section 279.5 of the regulations, a request for review will be timely if it is postmarked the next day which is not a Saturday, Sunday or legal (Federal) holiday.

If a timely request for review is made, no payment should be sent and administrative action will be held in abeyance, as provided in Section 278.8 of the regulations, until a decision on your request has been made by the Food Stamp Review Officer. This action is taken under the authority of Section 278.6(a) of the regulations governing the Food Stamp Program. The rules governing your review rights are contained in Section 278.8 and Part 279 of the Food Stamp Program Regulations.

You may be disqualified from the WIC Program as a result of your disqualification from the FSP. In accordance with current laws governing both the FSP and the WIC Program, such a WIC Program disqualification is not subject to administrative or judicial review under the WIC Program.

This determination shall not preclude the Department of Agriculture or any other agency or department of the United States from taking further action to collect any claim determined under the regulations governing the Food Stamp Program or under any other pertinent statutes or regulations, nor shall this determination preclude prosecution under any applicable penal statutes.

In accordance with Section 278.6(f)(2)(3)(4) of the Food Stamp Regulations, in the event that you sell or transfer ownership of your firm, you will be subject to and liable for a civil money penalty in an amount to reflect that portion of your disqualification period that has not expired.

Sincerely,

Original Signed by:  
Thomas W. Andresen

Thomas W. Andresen, Manager  
Retail Management Unit  
Food Stamp Program

Enclosure: Bonding Instruction

cc: Ernest Codelia, Attorney /

Exhibit U



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United States  
Department of  
Agriculture

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Food and  
Nutrition  
Service

December 20" 2002

3101 Park  
Center Drive

Attorney Ernest Codelia  
1967 Turnbull Avenue  
Bronx, NY 10473

Alexandria, VA  
22302-1 500

RE: Wilson Baez, President  
1086 Superette Corp  
1086 Boston Road  
New York, NY 10456

Dear Sir:

I have completed an administrative review of the permanent disqualification from participating in the Food Stamp Program at your client's store. During the review, I considered information supporting your contention the store should not be sanctioned, as proposed by the Food and Nutrition Service (FNS). My review has included USDA investigative and administrative records from which the proposed sanction was determined, and your May 24 response to the charge letter of May 8" 2002, as well.

The sanction determined by the Regional office resulted from an investigation, which documented Food Stamp Benefit trafficking transactions at subject store on October 17 and 19, 2001.

An investigator from the Department's Compliance Branch went to the store to determine if coupons were being exchanged for cash. During each of the two cited visits the shopper exchanged \$40 in Food Stamp Benefits for \$2:8 cash. This totals \$80 in Benefits exchanged for \$ 56 cash.

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With a charge letter of May 8, 2002 the Regional office notified your client of all the investigative transactions at this store, (including the sale of ineligibles) and invited a response. Your correspondence of May 24 declares the firm fired an employee who was trafficking in Benefits and was also stealing cash from the firm.

After considering your response, the Regional office notified 1086 Superette Corp by letter of August 30, 2002 the store would be permanently disqualified as a consequence of two trafficking transactions at the store.

During administrative review you said: Your client has agreed to pay the Trafficking Civil Money Penalty of \$40,000 if one is offered, and you asked for an expeditious response in review.

Based on my study of the investigative documentation, I find the violations with which the firm is charged are supported by substantial evidence. These charges resulted from documented transactions in the store, reported in a formal USDA investigation.

Section 278.6 (1)(i) of the program regulations calls for the imposition of a permanent disqualification when the evidence establishes that "Personnel of the firm have trafficked as defined in 271.2;"

Program Regulations at Section 278.6 (i) establish four criteria an appellant firm must meet to qualify as eligible for a CIVIL MONEY PENALTY in place of permanent disqualification. Timely documentation was not submitted which would satisfy these criteria. I am, thus, sustaining the decision of the Regional office to deny a civil money penalty in lieu of permanent disqualification.

It is my determination that the permanent disqualification of 1086 Superette Corp is in accordance with Section 278.6(e)(1)(i) of Food Stamp Program Regulations. I am sustaining the decision of the Regional Office to impose that sanction.

The option to request judicial review of this decision is outlined in Section 279.10 of Program Regulations. Such complaint, naming the United States as the defendant, is to be filed in the United States District Court for the district in which the appellant resides or is engaged in business, or in any court of record of the State having competent jurisdiction. It must be filed within 30 days of your receipt of this letter.

Sincerely,

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PATRICKA. FRANK  
Administrative Review Officer

08 Civ. 2960 (RJS)

UNITED STATES DEPARTMENT OF AGRICULTURE  
SOUTHERN DISTRICT OF NEW YORK

FRANKLYN F. LUGO,

Plaintiff,

- against -

UNITED STATES OF AMERICA,

Defendant.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)  
COUNTY OF BRONX ) ss.:


NELLY ORTIZ, being duly sworn, say: I am not a party to the action, and over 18 years of age and resides at New York, New York.

That on August 8, 2008, I served AFFIRMATION IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT by mailing a copy to each of the following persons at the last known address set forth after each name below.

U.S. Attorney for the Southern District of New York  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007  
Attn.: Mr. 1. Cordaro, Esq.

Sworn to before me this  
8<sup>th</sup> day of August 2008

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NELLY ORTIZ